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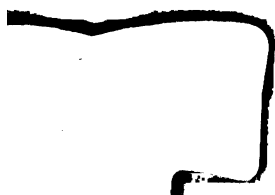
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AN  
ENQUIRY  
INTO THE  
FOUNDATION  
OF THE  
English Constitution;  
OR,  
An HISTORICAL ESSAY  
UPON THE  
Anglo-Saxon Government  
BOTH IN  
*GERMANY* and *ENGLAND*.

To which is added

An APPENDIX,  
CONTAINING,

1. An Essay on the Balance of civil Power in *England*.
2. A List of all such Cities, Towns, and Burrows, as have ever been summoned to Parliament, with the Date of their *First Returns*.

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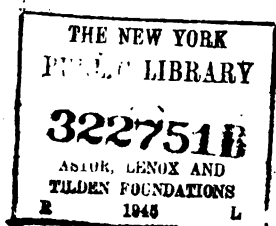
By SAMUEL SQUIRE, D.D.

Archdeacon of *Bath*.

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L O N D O N,

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TO the MOST NOBLE

THOMAS HOLLES,

Duke of NEWCASTLE,

His MAJESTY's Principal Secretary  
of State, etc. etc. etc.

MY LORD,

**Y**OUR Grace having permitted me to prefix your illustrious name to a former impression of this book, I flatter myself, that I shall be pardoned the liberty, which I now take, in offering this improved edition to your patronage and protection. The favours, which I have received

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*C. S. Packard - 4 June, 1948.*

ceived at your Grace's hands, have been so many, and so considerable, that I should be perfectly inexcusable, was I not to lay hold of every opportunity of owning my obligations, and declaring my perpetual gratitude to my generous benefactor.

It is a circumstance of no small credit to those, who are honoured with your Grace's particular patronage, and it gives me amongst the rest an inexpressible pleasure to reflect, that I owe my present happy situation to a nobleman, whose high birth and titles are the least of his distinctions — To the first, and most experienced statesman in Europe — To the steady and consistent patriot, who, after having enjoyed the most important

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## DEDICATION.

ant office, which his royal masters could confer upon him, longer than any other minister ever did, still continues in the highest confidence of his prince, and is, at once, the friend and the delight of the people.

By having the honour to be admitted into your Grace's house, as one of your family, I have continual opportunities of being an eye-witness of an industry in the public service, which no labours can weary ; of a memory, which no object, or circumstance, can escape ; and of an uniform attention to all the essential interests of religion and learning, which no difficulties can lessen or discourage — But, where humanity, and a general benevolence are concomitant



## DEDICATION.

comitant to all these eminent qualities and virtues, the highest advantages of nature, fortune, and education are so softened, that instead of awing and confounding the humble admirer, they engage his affections, and raise in him a kind of respectful assurance.

It is this affability, and suavity of manners, which encourages me to hope, that your Grace will vouchsafe to accept, with your usual condescension and goodness, this lowly tribute of duty and thankfulness, and still continue to reckon me in the number of,

*My Lord,*

*Your Grace's most humble,*

*most faithful,*

*and most devoted servants.*

Samuel Squire.

[Title]

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AN  
HISTORICAL  
ESSAY  
UPON THE  
ANGLO-SAXON  
GOVERNMENT, etc.

I. **T**HE subject of the following sheets will, I hope, appear both useful, and entertaining to the reader. For tho' in every kind of history, there be something extremely agreeable to the active, and inquisitive mind of man; yet no part of it strikes the imagination with a more lively pleasure, or affords a more solid benefit, than that, which professes to treat of the affairs of our own country. Other Histories, indeed, may amuse, and divert, for a time; but this makes a lasting impression upon us, as it  
A gives

gives us an immediate interest in the events, and makes us even parties in what we read. We substitute ourselves in the places of our fathers and grandfathers ; we blame and we commend, we admire and accuse, we are pleased and dejected, just as if we had been present at the transactions themselves, and our own happiness or misery was concerned in the success. Even the most minute, and trifling customs of our ancestors, (such an instinctive fondness have we for whatever regards our native country) we think worthy to be traced out ; we feel a pleasure in being informed of the private œconomy of their families : their domestic utensils, the habits they wore, the shape of their weapons, every thing engages our attention, which has been ennobled by their use. By means of this general acquaintance with the private, as well as public life of our remote forefathers, we make ourselves a sort of amends for the shortness of our duration ; we add, as it were, a thousand years to our own span of being, and flatter ourselves with the affecting imagination of actually seeing, and conversing with, those great, and illustrious progenitors,

tors, to whose valour and public spirit we are, even at this day, so much obliged. — But if enquiries of so little consequence in themselves, as those above-mentioned, are thought to merit the research of the antiquarian, and meet with a due encouragement in the satisfaction, which they afford to a serious reader; how much more useful, as well as entertaining, are the weighty and important matters, which relate to the form of government, which they lived under, and to the plan of their civil constitution? This is a part of knowledge, in which every Englishman is really interested; and which he cannot be wholly ignorant of without some hazard. Mistakes in these points may be, and actually have been, of the most dangerous consequence to the happiness of the whole nation. Such persons as are well acquainted with the history of this country, towards the latter end of Charles the second, and his brother's reign, (to say nothing of more modern times) will not require particular instances of what has been here advanced. — Other parts, therefore, of our antiquities

may be either known, or passed by, as matters of curiosity and entertainment, rather than of public utility : but the original of the civil polity cannot be too carefully studied, or too minutely enquired into, in such a country as ours is — where every party, into which the nation is divided, in support of its political principles, appeals to the antient constitution ; and pretends to make that alone the rule, by which it is ready to be justified, or condemned. It cannot therefore be deemed an useless, and unnecessary undertaking to endeavour to describe, what the antient constitution of the kingdom was, by the incontestable evidence of history ; and to attempt to delineate, in all its several branches, that primitive form of government, which our Anglo-Saxon ancestors first established in this island. — The subject, it is true, has been already attempted by several hands ; but, as I would always choose to commend rather than to censure, especially where the intricacy, and obscurity of the argument requires so much indulgence, I shall not offer at a critique upon their works ;

works ; ready as I am, and willing, to confess, that if, in some few instances, perhaps, I have been able to see farther than those, who have entered this province before me, it has been wholly owing to the advantage, which I have had, of being placed upon their shoulders.—He, therefore, who pleases himself with the fond conceit, that he is already sufficiently acquainted with the whole, which can be offered upon this interesting part of our civil history, will give himself no farther trouble in reading : whilst he, who thinks otherwise, will be so kind, as to accept this essay in good part ; will read the whole with proper attention ; will examine carefully, and judge impartially. This is all the favour, which the author expects to find at his hands ; and this, he imagines, he has a just title to demand, for the pains which he has been at in endeavouring to elucidate this curious, entertaining, and most useful subject. Thus much it was thought necessary to premise, before we entered upon our *Enquiry into the foundation of the English constitution.*

2. The *Saxons*, as well as those other nations, the *Jutes*<sup>a</sup> and *Angles*, that joined with them in the conquest of Britain, were originally descended from the antient Cimbri, and came from the northern regions of Asia<sup>b</sup>. This was the place of their birth, (as far back as can be traced with any appearance of probability) and in this cold and uncultivated country they made their

<sup>a</sup> Or Goths, as they are more commonly called. See *Sheringh. De Anglor. gent. orig.* p. 36. and *Grotii Prolegomena. ad Hist. Goth. Vand. etc.*

<sup>b</sup> *Sheringh. ibid.* p. 27. Majores nostri ex veterum Saxonum genere fuere, qui, sub Wodeno duce, primi ex Sarmatia Asiatica effusi sunt in Germaniam. *Id.* p. 28. Anglorum nomen adoptivum erat, ab Angulo ubi confederint translatum: antiquo enim nomine Suevi appellabantur, et pars Suevorum fuerint, quos Caesar suo tempore longe maximam et bellicosissimam gentem omnium Germanorum fuisse tradit.—*Id.* p. 45. Illud quoque satis certum et expeditum est, tres populos dictos Saxones, Anglos, Getas, ex genere Cimbrorum fuisse, quos funestissimum bellum Romanis intulisse Romanae historiae scriptores referunt.—Hi sinus Codani insulas omnes, totam Jutiam, quae exinde Cimbrica Chersonesus nominata est, et reliquas Germaniae provincias ad littora maris sitas, Frisiam item, et Bataviam in sua ditione tenebant.—This treatise of Mr. Sheringham being esteemed by all competent judges, the best account, which we have, of the origin of the English nation, I think it sufficient barely to quote his testimony for what I have advanced upon this subject, without producing the authorities themselves, upon which our diligent Antiquarian founded his opinion.

<sup>c</sup> It was not a desire of plunder, or a greediness of booty, as is commonly reputed, which engaged the first mortals in that wandering course of life, which later writers have taken so much notice of; but the hopes, rather, of a better, and more plentiful, subsistence in another country, than what their own was able

their abode, till encrease of multitude, introducing a scarcity of provision, compelled them, in great numbers, to leave their native seats, and to go in search of new habitations, wherever the hopes of a more comfortable subsistence for themselves, and a greater plenty of forage for their cattle invited their wandering steps. This was the vast hive, from whose fertile bosom

able to afford them. As they were entirely ignorant of the art, or, at least, did not care to be at the pains of cultivating and improving the soil; as they had not yet began to build towns and cities, nor had learned to supply one another's wants by the mutual good offices of trade; and as they carried on no commerce, or correspondence, with the neighbouring nations; this made it necessary for them to be in possession of an extensive territory, which might, at the same time, be sufficient to find themselves game to subsist upon, and to maintain their flocks and herds, the only riches which they then knew how to make any use of. So frugal and temperate a course of life, as it soon overstocked their land with a numerous progeny, so it, accordingly, brought with it a difficulty of supporting the still encreasing multitude; and this introduced a necessity of exonerating the country of its superfluous mouths, by forcing a certain number of them to seek for a better maintenance in the neighbouring countries, or wherever else they were able to find it.—There is a very elegant passage in *William of Malmesbury* to this purpose, *De Reg.* l. i. c. i. Quapropter sicut hi, quibus id muneris est, lascivientes arboris ramos solent succidere, ut reliquorum vitæ succo suo possit sufficere: sic incolae aliquorum expulsione matrem alleviant, ne tam numerosae prolis pastu exhausta succumbat; sed ut facti minuant invidiam, forte ducunt eliminandos. Inde est quod illius terrae homines invenerunt sibi ex necessitate virtutem, ut natali solo ejecti peregrinas sedes armis vendicarent, sicut Vandali, etc.

bosom were poured forth those mighty swarms of people, which, in the first place, (under the conduct of the famous *Woden*) overspreading the neighbouring country of Scandinavia, or northern Europe, afterwards, by degrees, covered all Germany, overwhelmed Spain, Gaul, and Italy, and made themselves masters of the whole western empire. It would be matter of curiosity, rather than of real advantage to us in the following Essay, to attend our ancestors thro' all their early migrations, various expeditions, and frequent change of place—only it may not be improper to observe, that when the Britons, (about the middle of the fifth century) at the instigation of Vortigern, sent to demand their assistance, in order to put a stop to the continual invasions of the Scots and

\* As I shall have very frequent occasion to quote the famous piece of *Tacitus De moribus Germanorum*, I must not here omit the character, which the inquisitive Cluverius has given us of it. —*De situ ac populis hujus terrae, [Germaniæ] deque origine ac moribus universæ gentis tam accurate, tamque diligenter conscripsit, uti nullam aliam regionem, nullam gentem aequè descriptam ab ullo veterum auctorum habeamus. Vid. Cluver. German. Antiq. p. 3.* To the authority of Cluver, give me leave to add the testimony of a late author, in favour of this tract of *Tacitus*.—*Tacite fait un ouvrage exprès sur les mœurs des Germains,*

and Picts, they were in possession of those countries of the German continent, which are, at present, distinguished by the names of Jutland, Saxony, Westphalia, East and West Friesland, Holland and Zealand.—The Roman historians, and indeed most other writers before the North was more accurately known, and geographically divided into its several states and provinces, called all its inhabitants, in general, by the common name of *Germans*; and under this appellation, amongst the other northern nations of Europe, are our Anglo-Saxon ancestors described by Tacitus<sup>4</sup>, (in his most accurate treatise of this people) and comprehended by other authors<sup>5</sup>. And, in truth, so great is the conformity, and so exact the resemblance, which has been remarked between the languages, customs, laws, and

mains. Il est court cet ouvrage, mais c'est l'ouvrage de Tacite, qui abregéoit tout parce qu'il voyoit tout. *Esprit des Loix*, liv. xxx. cap. 2.

<sup>4</sup> *Sheringh.* p. 77. Germania Taciti, sicut etiam et Ptolemaei, longe majores terminos, et limites, habuerit, quam nunc habet; totam quippe Daniam, insulas plures maris Baltici, peninsulam Scandiam, id est, Norwegiam, Scaniam, Gothlandiam, Suediam, aliasque insuper regiones complexa est. See likewise to the same purpose *Cluver. Ger. antiq.* l. i. p. 94. c. 11. et *Gul. Malmesb. De reg.* l. i. c. 1.

<sup>5</sup> Proinde

and modes of governing in use amongst the several nations of these wide-extended regions, (however distinguished from each other by different names) that whatever is affirmed by the antients of the Germans in general, may, with equal truth, be applied to the inhabitants of each particular province<sup>f</sup>; the same principles and maxims, religious, civil, and military, seem to have animated the whole multitude of this hardy people.

### 3. The

<sup>f</sup> Proinde quicquid de Germanorum moribus dicetur in universum omnibus tributum intelligi debet—*Cluverius* as above.

<sup>g</sup> Hear *Lucan* :

Omnis in Arctoïis populus, quicumque pruina  
Nascitur, indomitus bellis, et mortis amator.

The Germans (as has been hinted above) were, probably, descended from the Cimbri; and each of them seem to have had their name given to them from their valour, and skill in war. So *Sheringh.* p 56. Cimbris hoc nomen ex fortitudine, et bellica virtute, partum est: *Cimbri* enim Germanice significant, *robusti milites, pugiles et palæstrici viri*.—Hinc etiam, ni fallor, Germanis suum nomen. *Germanus* enim idem valet quod *Kimber*, id est, *homo bellicosus*, a *Guerre*, quod bellum, et *Man*, quod hominem significat; ipsisque nomen hoc primum a Gallis, ut *Tacitus* narrat, ex timore inditum. See *Cluver. German. antiq.* l. ii. p. 104. who agrees with *Sheringham* in this derivation of the name of Germans; as do, indeed, most of the learned.

<sup>h</sup> This principle, in particular, could not but have a mighty effect upon the military operations of all those, who firmly believed it. To dye with their swords in their hands was the only way to be completely happy in another life. With what enthu-

3. The most daring courage; an extreme fondness for war<sup>a</sup>; a steady perseverance in their old traditions; an invincible love of liberty; an ardent zeal for the religion of their forefathers, and a contempt of death, grounded upon the persuasion of a happy futurity<sup>b</sup>, were the common characteristics of all these northern nations. — No wonder therefore, that

siasm must such a notion fill the breast of every soldier! — *The author of the Pharsalia* has very elegantly touched upon the consequences of this principle in the following lines :

Populus quos despicit Arctos  
 Felices errore suo; quos ille timorum  
 Maximus haud urget, Lethi metus; inde ruendi  
 In ferrum mens prona viris, animique capaces [rapaces]  
 Mortis, et ignavum reditionis parcere vitae.

The immortality of the soul, or, more properly perhaps, the sensual pleasures, which all those, who were slain fighting for their country, were to enjoy in another state with their illustrious progenitors, who had fallen in the same cause, were the general subject of those songs, or hymns, which their bards composed and sung, not only just before they were going to engage the enemy, (for as *Diodorus Siculus* observes of the Lusitanians, ἐν ταῖς πολέμοις πρὸς ῥυθμὸν ἑμβαίνουσι, καὶ παλαιὰς ᾄδουσιν ὅταν ἐπιώσιν τοῖς ἀντιτεταγμένοις. See likewise *Tacit. de M. G. c. 2.*) but also at all their public festivals, to rouse the martial ardour of their countrymen. Some of these warlike odes or ballads are still to be seen in the collections of the Swedish and Danish antiquarians; and Malmesbury tells us, that just before the battle of Hastings, the Normans began the Cantilena Rollandi — a song, probably, in praise of Rollo.

that animated with these principles, (whilst the rest of Europe groaned under the heavy yoke of bondage, harassed, oppressed, and enslaved by the common enemies of the peace and independency of mankind, the Romans<sup>c</sup>) the greatest part of Germany, still preserved its native freedom pure and inviolate<sup>d</sup>, and continued to live under that primitive form of government, and to regulate its civil conduct upon the plan of those antient customs, which had been delivered down to it from its original planters and possessors — customs, which in this country, as the Roman historian has observed<sup>e</sup>, carried more force and authority with them, than the written laws of other places. Nor can it be seriously questioned, but that wherever they  
extended

<sup>c</sup> *Epistola Mithridatis ad regem Arsacem, apud Hist. Fragmenta Sallustii*, l. iv. — Neque quicquam a principio nisi raptum habere [Romanos] domum, conjuges, agros, imperium. Convenas, olim sine patria, sine parentibus, peste conditos orbis terrarum; quibus non humana ulla neque divina obstant, quin socios, amicos, procul juxta sitos, inopes, potentisque trahant, excidantque; omniaque non serva, et maxime regna, hostilia ducant. This, tho' it be the representation of a professed enemy to the Romans, yet is, nevertheless, supported by the unanimous consent even of their own historians. See likewise Galgacus's speech to his countrymen the Caledonians, concerning the Romans, preserved in Tacitus's life of Agricola.

<sup>d</sup> Give

extended their conquests ; at whatever untried lands their numerous swarms arrived, there, likewise, they regularly established, or continued rather, the same constitution and mode of civil government, which they had been accustomed to live under in their own country—as near it, at least, as the different circumstances of their new situation would conveniently permit. This supposition is so easy and natural ; so entirely agreeable to the genius of this resolute people, and, at the same time, so well confirmed by antient history, that no competent judge, I believe, will venture to dispute it with me.

4. If, therefore, we would form a just, and true, notion of the Anglo-Saxon government, as it was originally settled, and  
admi-

<sup>4</sup> Give me leave to quote the authority of *Lucan* once more :

Libertas ultra Tanaim Rhenumque recessit,  
Et toties nobis jugulo quaesita negatur,  
Germanum Scythicumque bonum —

L. vii. † 243.

• *Tacitus De morib. German.* c. 19. Plus ibi boni mores valent, quam alibi bonae leges ; or, in the words of Ovid,

Sponte sua, sine lege, fidem rectumque colebant.

† *Brady's*

administred in this island ; and are desirous of investigating with accuracy, and conviction, the foundation of our present happy constitution — we must, in the first place, take a view of our ancestors in their prior settlements, and acquaint ourselves with the nature of the civil polity, under which they lived before their entrance into Britain. For, as Dr. Brady expresses it, “ they are the antient customs of the “ Germans in general, from whence must “ be deduced the grounds and rudiments “ of the Saxon laws, government, and “ policy afterwards established in this nation.” But from whence, may it be here asked, are we to expect our information upon this principal and leading point? For the antient Germans, it is well known, were not at all studious of cultivating the knowledge of letters ; nor had they, more than the rest of their Cimbrian brethren, any

\* *Brady's Complete History*, vol. i. p. 57. I chose to make use of the very expressions of Dr. Brady upon this occasion, because, as we differ not a little in our conclusions, I was willing to shew, that we both argue from the same principles.

† *Tacit. De morib. German.* c. 19. *Litterarum secreta viri pariter ac foeminae ignorant*: And he had before observed, that they had no other kind of annals or histories than the songs composed

any other records amongst them, than the enthusiastick hymns of their bards, or poets\*. We must have recourse, therefore, upon this occasion, to the writings of the learned Romans, whose provinces bordered upon them, and whose curiosity could not but prompt them to enquire minutely into the customs and manners of a people, who, under the names of Gauls and Cimbri, had frequently shaken their empire; and before whose numerous, and well-resolved, armies their victorious legions themselves trembled. And tho' the utmost light, which we can expect to procure, may not be sufficient to enable us entirely to dispel the thick gloom, with which we have been hitherto involved; and to elucidate all the curious questions, which may arise upon so engaging, and interesting, a subject---yet will it, I hope, be clear enough to assist us in drawing the outlines

composed in memory of their heroes: *Celebrant carminibus antiquis (quod unum apud illos memoriae et annalium genus) Tuistonem, etc. c. 2.* And, even as low down as Charlemagne's time, Eginhart tells us, speaking of this prince, *Item barbara et antiquissima carmina, quibus veterum regum actus et bella canebantur, scripsit, memoriaeque mandavit.*

outlines of their political fabric; and in pointing out the principal, and most striking, parts of the structure—all such, at least, as are any ways necessary to our farther design of delineating, or describing the Anglo-Saxon government in Britain. In dubious cases, where better evidence cannot be obtained, the best and most candid judges will be always guided by probability.

5. It appears, then, from the remains of antient history, that Germany was originally divided into many separate, and distinct, nations; all of them, as to jurisdiction, perfectly equal, and entirely independent upon one another. Each of these nations,

\* *Caesar De bell. Gall.* l. iv. near the beginning. Suevi centum pagos habere dicuntur.—And he had before observed, in the first book, c. xii. Civitas Helvetia in quatuor pagos divisa est. Upon the former of these passages of Caesar, *Montanus* adds in his notes, dividere agros in *Pagos*, omnibus Germaniae gentibus commune fuit. Est autem Pagus integra amplioris regionis portio, cujus apud ipsos Germanos vernaculum vocabulum fuit *Gau*; et, variantibus dialectis, *Gew*, *Gow*. [Thus, in the Gothick version of the gospels by *Ulphilas*, we find *χῡρα* translated *Gawi*.] Vid. plura apud *Claver. Germ. antiq.* p. 113. The French still retain this signification in their word *Pays* or *Pais*, which was derived immediately from it; so *Senonicus* Pagus they call, le *Pais* de Normandie, etc.; whilst our English antiquaries (vid. *Spehman* in voce *Pagus*) always, I think, interpret it by the well-known division of our island into those distinct parts or portions, which we now call *shires*. Thus, *Samartunensis*

nations, or states, was again subdivided into a certain number of *Pagi*, (as they are called by the Roman authors) that is, of distinct provinces, or districts, — more or fewer, according to the number of tribes or clans, which, upon its first planting, composed the state — greater or less, according to the different extent of their territories: thus the country of the *Suevi*, as Caesar informs us, was made up of an hundred of these *Pagi*<sup>a</sup>; as that of the *Helvetii*, according to the same author, was divided into four. Each of these provinces, or districts, formed a sort of community, or politick society, within itself, having a distinct prince, president, or judge, for its di-

B rection

*sis Paga*, in Asler's annals, means *Somersetshire*; as *Orientales Pagae*, in the same author, are intended to express the eastern shires, or counties. — Grotius and others, who would still subdivide these *Pagi* into their towns, or *vici* (understanding towns, in the sense we do at present, for a collection of houses, forming a sort of civil society amongst themselves) are certainly mistaken, as appears from the whole tenor of the German history. The antient *vici*, it is probable, were nothing but οἶκοι, *distinct houses*, however apt we may now be to join other ideas to the word. For it is undoubted, that the Germans, like all the rest of the old world, προεσάδες ὤκων, as Aristotle has justly observed. — See however *Tacitus De mor. Germ.* c. xvi. Nullas Germanorum populis urbes habitari: <sup>his</sup> notum est, ne pati quidem inter se junctas sedes. Colunt discreti ac diversi, etc.

rection in civil affairs, and its own general in time of war. But tho' these provinces, considered apart, had each of them its own scepter, if I may use the expression ; and was, in a great measure, independent upon the rest ; yet were they all subject to the regulations, and subordinate to the authority of the supreme legislative power, which was lodged in the universal assembly, or convention of the whole state, or nation. — Such was the original, and general, plan of their political building ; and upon this, or a similar model, not only the government of England, but likewise of every other nation of the known world, was, probably, at first formed. But we will proceed to a more explicit, and precise, examination of the several parts, or members, of this antient Gothic constitution.

6. Now

\* *Tacit. De mor. Germ.* c. 5. Suam quisque sedem, suos penates regit. So *Aristotle (Polit.* p. 3.) speaking of the first ages of the world, tells us, πᾶσα οἰκία βασιλεύεται ὑπὸ τῷ πρεσβυτάτῳ — καὶ τῶν ἑσιν ὁ λέγει "Ομηρος,

— Σεμισεύει δὲ ἕκαστος

Παίδων ἢ δ' ἀλόχων.

σποράδες γὰρ, καὶ ἔτι τὸ ἀρχαῖον, ἔχεν. *Caesar, Bell. Gall.* l. vi. c. 19. Viri in uxores, sicuti in liberos vitae necisque habent potestatem. I shall not scruple to illustrate this account of the antient

6. Now with respect to individuals, the first and most minute parts, of which the aggregate of society is composed, we find, that every man amongst our German ancestors exercised a patriarchal authority, as lord, and governor, of his own household<sup>a</sup>. His whole family seems to have been immediately subject to, and dependent upon, him alone; his word was their law, he administered justice to them, and by his own authority put an end to their disputes. His slaves, those unfortunate persons, whom either the chance of war, or any other accident had thrown into his hands, were so absolutely in his power, that tho', in the fury of his passion, he killed any of them; yet was he under no apprehension of being called to an account for his rash severity<sup>b</sup>. If his wife at any time violated the honour  
of

antient German customs, and manners, by what I find in Caesar, or in any other author, concerning the Gauls, and other Celtic nations — For the observation of the learned Cluverius is undoubtedly true (*Germ. antiq.* p. 103.) *uti gentem fuisse unam Celticam, Hispanos, Gallos, Britannos, atque Germanos supra probatur; sic moribus quoque pene iisdem universos vixisse, nisi quatenus Hispani ac Galli nonnullas Graecorum consuetudines admiserint, clare infra patebit.*

<sup>b</sup> *Tacit. De mor. Germ.* Occidere solent servum non disciplina et severitate, sed impetu et ira ut inimicum, nisi quod im-

of his bed, he had a right of inflicting an immediate punishment upon her, without waiting for any previous trial, or condemnation<sup>c</sup>. — Let it, however, be remarked to the credit of our German patriarchs, that, notwithstanding they were in possession of so great an authority, they did not, in general, make a bad use of it — the treatment, which they gave their slaves, being, for the most part, mild and gentle<sup>d</sup>, and their behaviour to their wives, such as would be an honour even to these politer ages, wherein mode, or fashion, seems to have disguised the native deformity of vice<sup>e</sup>. For, contrary to the unnatural luxury, which the warmer climes of Asia had very early introduced into the world, each  
man

pune. The Polish gentlemen have the same power to this day : Les gentil-hommes Polonois (says Hauteville, in his account of this country) ont un droit de vie, et de mort, sur tous les payfans, chacun sur ceux, qui lui appartiennent.

<sup>c</sup> *Tacit. ut supra.* Paucissima in tam numerosa gente adulteria, quorum poena praesens, et maritis permessa. What this punishment was the same author will inform us, c. 19. Accis crinibus nudatam coram propinquis expellit domo maritus, ac per omnem vicum verberare agit. Tho' the power still continued, the punishment, in later times, was somewhat altered. See Malm-sbury, l. i. c. 4.

<sup>d</sup> *Tacit. ut supra.* c. 25. Verberare servum, ac vinculis et opere coercere, rarum. If therefore they were, sometimes, hard  
and

man, in imitation of his first parents, lived contented with one wife only; whilst love, and dutiful obedience to her husband, made up the principal part of the woman's character. Nor, as the curious Roman has justly observed<sup>f</sup>, was there any part of their moral discipline, or behaviour, more commendable, than the strict severity with which they preserved the honour of the marriage bed inviolate. Adulteries were scarcely heard of in all that multitude of people, with which these nations abounded; a continence, perhaps, which we shall not be mistaken to impute to the custom which prevailed amongst them, for the husband to bring a fortune to the wife, and not the wife to the husband<sup>g</sup>. There was, indeed, no country  
in

and severe to them, it ought rather to be imputed to the starts of a momentary passion, than to their common custom, and behaviour.

\* *Tacit. ibid.* Nemo enim illic vitia ridet: nec corrumpere et corrumpi saeculum vocatur.

<sup>f</sup> *Tacit. De M. G. c. 18.* Severa illic matrimonia: Nec ullam morum partem magis laudaveris; nam prope soli barbarorum [I will not be bound to answer for the truth of this general assertion of my author] singulis uxoribus contenti sunt; exceptis admodum paucis, qui non libidine, sed ob nobilitatem, plurimis nuptiis ambiuntur — and he has elsewhere told us, that there were paucissima in tam numerosa gente adulteria.

<sup>g</sup> *Tacit. ut supra.* Dotem non uxor marito, sed uxori maritus offert. This was perhaps the universal custom of the patriarchal ages. See the story of Sicheu and Dinah, GEN. xxxiii. There  
are,

in the world, where the women, in general, were treated with more complaisance and esteem; or had a greater regard paid to them, as part of the reasonable, or human, species than in Germany<sup>b</sup>.

7. With respect to the management, and administration of those domestic affairs, which, at present, take up so much of the time, and care of every master of a family, these, as matters of a mean and inferior concern, were left to the conduct and discretion of those members of their household, whose sex, or years rendered them unfit for the more active employments of life<sup>a</sup>. For war was the

are, likewise, similar instances to be found in Homer; as likewise in the history of China to this day.

<sup>b</sup> Captivitatem, says *Tacitus*, *ibid.* c. 8. longe impatientius foeminarum suarum nomine timent; adeo ut efficacius obligentur animi civitatum, quibus inter obsides puellae quoque nobiles imperantur; inesse quinetiam sanctum aliquid, et providum putant: nec aut consilia earum aspernantur, aut responsa negligunt. So likewise *Plutarch*, in his treatise *Περὶ γυναικ. ἀρετ.* (speaking of the Celtic nations,) ἐκ τάτῃ διετέλυν περὶ τε πολέμου καὶ εἰρήνης βουλευόμενοι μάλιστα τῶν γυναικῶν, καὶ τὰ πρὸς τὰς συμμάχους ἀμφίβολα δι' ἐκείνων βραβεύοντες. The same kind of authority, or even greater, the Sarmatians, the ancestors of our Germans, gave their women: For, 'tis observed by Nicholas of Damascus, ταῖς δὲ γυναιξὶ Σαυρομάται πάντα πείθονται ὡς δεσπόιναις. Nor is it to be doubted, but that the same custom might be traced, was there occasion, through most other the antient nations — were they not, originally, permitted to meet in council with their husbands in Attica? Such mixed assemblies

the only occupation, which they looked upon, as worthy their notice and application ; and to excel in arms was their great glory, and the utmost bounds of their ambition. When not actually engaged in any military expedition, hunting would, indeed, sometimes employ their leisure hours ; tho' an idle waste of time, consumed in eating and drinking, seemed far more agreeable to the opinion, which they entertained of liberty and independence<sup>b</sup>. If we are ready to condemn them for notions, which, agreeably to the modern way of thinking, appear so utterly everfive of civil society, we  
must

assemblies might, indeed, be attended with some inconveniences, and this would be sufficient, by degrees, to put an end to them.—The Lycians, however, may be thought even to outdo the Celts in their complaisance to the ladies ; for, according to the same author, Λύκιοι τὰς γυναῖκας μᾶλλον ἢ τὸς ἀνδρας τιμῶσι, καὶ καλῶνται μητρώθεν, κ. τ. λ.

<sup>a</sup> *Tacit. De mor. Germ.* Fortissimus quisque ac bellicosissimus nihil agens, delegata domus, et penatium, et agrorum cura foeminis senibusque, et infirmissimo cuique ex familia, ipsi habent : mira diversitate naturæ cum iidem homines sic ament inertiam, et oderint quietem. The same has been observed of the Crimean Tartars, even at this day.—Ils sont fort paresseux lorsqu'ils sont dans leurs pays ; mais aussi extrêmement laborieux et vigilans, quand ils en sortent pour faire des courses. Hauteville's historical account of Poland. p. 51.

<sup>b</sup> *Id.* c. 15. Quotiens bella non ineunt, non multum venatibus, plus per otium transigunt, dediti somno ciboque—as if they had been influenced by that maxim of Socrates, mentioned,

must condemn the whole antient world with them ; both Greeks and Barbarians looking upon manual labour, of every sort, as the undoubted mark of a poor, mean, and sordid disposition ; whilst the business of fighting was universally regarded, as the only sure mark and exercise of true nobility — military skill, and a mighty execution in the day of battle, was looked upon by them, as the highest pitch of excellence, which the human nature could arrive at, and the perfection of all other virtues<sup>d</sup>. Read but the institutions of the isle of Minos ; or those, still more famous, of the celebrated

somewhere, in *Ælian's various history*, “ That idleness is the sister of liberty : ” Ἡ ἀργία ἀδελφὴ τῆς ἐλευθερίας ἐστίν.

<sup>c</sup> *Herodot.* l. ii. Εἰ μὲν οὖν καὶ τὸτο παρ' Αἰγυπτίων μεμαθήκασι οἱ Ἕλληνες, καὶ ἔχω ἀτρεκέως κρίναι· ὁρέων καὶ Θρηίκας, καὶ Σκύθας, καὶ Πέρσας, καὶ Λυδούς, καὶ σχεδὸν πάντας τὰς βαρβάρους, ἀπατιμωτέρους τῶν ἄλλων ἡγεομένους πολιτῶν τὰς τὰς τέχνας μαθήνονας, καὶ τὰς ἐκγόνους τῶν τῶν ἀπαλλαγμένων τῶν χειρωναξίων, γενναίους νομίζοντας εἶναι. καὶ μάλιστα τὰς ἐς τὸν πόλεμον ἀνειμένους — So again, the same author, l. v. speaking of the Thracians, tells us, that, in their opinion, ἀργὸν εἶναι κάλλιστον, γῆ δὲ ἐργάτῃ ἀτιμώτατον. To the same purpose *Tacitus, ut supra* ; Pigrum quinimmo, et iners, videtur sudore acquirere, quod possis sanguine parare.

<sup>d</sup> *Cluver. Germ. antiq.* p. 123. Ipsa bellicositas virtutis nomen κατ' ἐξοχὴν sortita est. Sic enim apud gentiles auctores τῇ ἀρετῇ, id est, virtute gens gentem praeferre dicitur ; non ob temperantiam, vel fidem, vel pietatem, vel aliam quampiam moralium virtutum ; sed ob animi in certaminibus manuumque fortitudinem.

brated Lycurgus, and we shall find both Cretans and Lacedemonians educated in the same way of thinking: the Clarotae [or Mno-itae] and Helot slaves, learned and practised the mechanic arts, managed the lands, and did all other kind of work, in their respective countries of Crete and Lacedemon, “whilst  
 “their masters spent all their time in dancing  
 “and feasting, in their exercises, hunting  
 “matches, and the public places, where good  
 “company used to meet and converse.”

8. Contented, therefore, with the native liberty and independency, which they had received, as an inheritance, from their forefathers,

nem. Hinc illud Ciceronis in *Oratione pro Muraena*, Rei militaris virtus præstat reliquis omnibus; *et paullo post*, Summa dignitas est in iis, qui militari laude antecellunt. In the old Gothick translation of the gospels, *Man* is called *Wair* from the verb *warjan* which signifies prohibere, arcere, etc.—quasi proles mascula, as Junius (in his glossary upon these gospels) expresses it, in hoc præcipue nata esset, ut arma sibi pro salute patriæ fumenda essent. From hence is derived the word *War*, and *Warriour*, as if all men, as such, were designed to be either defending themselves, or attacking other people. So from the Anglo-Saxon monuments it appears, that our ancestors particularly distinguished the male sex by calling it *Wepned-man* from the weapons they bore; as *Women* were termed *Wif-men*, from their being employed in weaving garments for their families—whilst the term *Man*, like *Homo* in Latin, was originally common to both sexes.

\* See *Potter's Antiquities of Greece*, vol. i. p. 69. *Nic. Damascen. de mor. Gen.* Λακεδαιμονίοις τέχνας μαθητέναι ἄλλας, ἢ τὰς εἰς πόλεμον, αἰσχρὸν εἶναι.

† Tacit.

fathers, our antient Germans were very little solicitous about acquiring the superfluities of life. Room for their increasing multitudes, and the mere glory of the conquest, were the motives of their frequent wars with one another, and with foreign nations, rather than either cruelty of disposition, lust of power, or the avaricious hopes of plunder. Gold and silver, in their mutual commerce, they were happily ignorant of (at least in the early ages, wherein we are now considering them)—pleased therefore, and satisfied with the plain riches of nature, their numerous flocks and herds<sup>a</sup>, they had no notion of accumulating vast quantities of useless metals, fit for nothing so much as to propagate luxury, and to corrupt the morals of their possessors.

<sup>a</sup> *Tacit. de mor. Germ. c. 5.* Argentum et aurum propitii an irati Dii negaverint, dubito—Est videre apud illos argentea vasa legatis et principibus eorum munci data, non in alia vilitate, quam quæ humo finguntur—Permutatione mercium utuntur.—Numero gaudent [pecorum] eaeque solae, et gratissimae, opes sunt.

<sup>b</sup> *Tacit. ut supra.* Frumenti modum dominus, aut pecoris, aut vestis [servo] ut colono injungit.—The affair of cloathing could be no very expensive article in those times, when garments were made use of, not for pomp and ostentation, but merely to cover their nakedness; and to defend them from the cold of winter, and the heat of the summer. There are,  
I know,

fors. The lands, therefore, which were allotted to each man in the annual division of their territory, (being above labour himself) he, again, parcelled out amongst his slaves and dependents to be cultivated and improved — acquainting them, at the same time, with what he expected from them in return for his bounty, whether cloathing, cattle, or any thing else, which he thought he might hereafter stand in need of; and reserving, likewise, such a share, or proportion, of the yearly produce of the soil, as might be sufficient to maintain himself and his family with credit, and in abundance<sup>b</sup>.

9. Customs such as these, it is true, are very different from those of the more improved, and civilized ages, as we are pleased to term them;

I know, who misled by Cæsar's authority, seem to think, that the Britons, the first inhabitants of this island, were accustomed to go naked before their acquaintance with the Romans. But this, the very situation of the country, so far towards the north, absolutely forbids us to imagine. The Celts, part of whom the Britons, as well as the Germans, undoubtedly were, had two, or three, sorts of clothing in Tacitus's time — 1. The skins of wild and tame beasts, dressed and undressed. 2. A robe, spun or made out of the barks of trees. 3. Another sort of cloathing made of the wool of their sheep, thick, shagged, etc. and these garments, it appears from very good authority, were common to all the Celtic nations. See *Tacitus de M. G. c. 17.* and *Kirchmaier's notes upon the place.*

them ; but as they are not, for that reason only, to be immediately condemned as savage and barbarous, so neither ought we too hastily to conclude, that they are not real, nor supported by history. The power, which we have here taken notice of, as antiently belonging to the German masters of families, necessarily arose from that natural state of freedom, and mutual independency, wherein every man is born ; and which he would never have any thoughts of parting with, till induced thereto by mere necessity ; till the ambition, luxury, and vices of mankind had encreased their wants, enflamed their passions, and thereby introduced an abuse of the native and original privileges of the species. To prevent, therefore, the ill consequences of that mischief and confusion, which began to flow from hence, it became necessary, by degrees, to restrain, and, at length, totally to abolish an authority, which was grown dangerous to the public happiness. However, this despotic power ; or the power of every master over his own family, or household, was the first, and, indeed, the most natural, method, which reason dictated

tated of distributing justice, and maintaining the peace and tranquillity of individuals. For whilst every man took that care, which his own true interest required, of the good conduct and government, of his private family, (the lowest and most disorderly part of the nation) the general happiness of the whole community would, of consequence, be so far maintained and preserved.

10. But, if we are desirous to raise a lasting and beautiful edifice, it is not barely sufficient, that the foundations of the building be firmly laid, but the superstructure, likewise, must be regularly carried on, the due proportion between all the parts observed, and the materials well-cemented together. It being impossible, therefore, but that contentions, and disputes, must frequently arise between the several masters of families themselves, it was necessary, that some common judge should be appointed to decide the difference between them. Nature had no where given to them a proper authority, or power, over one another; and as every man would be prejudiced in his own favour, the rules, which equity suggested to them, would be but little attended to,  
when

when heard thro' the medium of self-interest. The wisest man makes but an indifferent judge in his own cause. In order, therefore, to prevent, or, at least, to restrain the fatal effects of those lasting quarrels and animosities, which must otherwise have been perpetually growing, and encreasing, between the several independent members of the state, to the subversion of all social happiness; our German ancestors, by common consent, or election, appointed over each pagus, or province, a distinct president, or judge, (called by the Roman authors, in their own language, sometimes king,

\* *Tacit. De mor. Germ.* Eliguntur in iisdem conciliis *Principes*, qui jura per Pagos, vicosque reddunt. So Caesar, speaking likewise of the Germans, tells us, that when they were at peace they had no one common magistrate over the whole state, sed *Principes* regionum atque Pagorum inter suos jus dicunt, controversiasque minuunt. *Grot. de rep. Batav. antiquitat.* p. 33. Apud Germanos, praeter eos qui sacra curabant, duorum ordinum homines fuisse reperio, *Principes* et *plebem*. Principes cum dico, non singulos intelligo, qui singulis gentibus imperitabant, ut plerumque ea vox usurpatur — sed eos, qui singuli partem aliquam gentis curabant, quae partes, majores quidem *Pagi*, minores autem *vici*, vocantur. And again p. 34. Sunt ergo hi principes dignitate generis ac muneris iidem, qui postea barones atque nobiles, *Cluver. Germ. antiq.* L. 1. p. 319. Singulis cujusque civitatis Pagis, ac vicis, suus erat magistratus, sive, ut Tacitus et Caesar vocant, *Princeps* qui jus reddebat. [I cannot find by either Tacitus or Caesar, that each vicus had its own prince, the prefect of the Pagus being, ex officio, to administer justice to all, house

king, at other times general, tho' most usually prince) with plenary authority to go round the district committed to his charge, and to hear and determine all causes, or matters of contention, which might arise within the limits of his jurisdiction'. By this wise provision proper care was taken for the regular distribution of justice, with the least trouble and inconvenience to individuals, as they were not obliged to go far; nor to wait long for it; nor to be at any expence in procuring it.

II. And that neither dignity might be wanting to the presence of the judge, or prince,

house by house, per Pagos vicosque, i. e. οἶκός τε — For Tacitus himself tells us, that the houses in Germany were all distinct, there being neither towns nor villages, see above, n. a, c. 5.] Nomen *Regis* a Romanis, ut ante dictum, (Pagg. 315, 316.) parum proprium iis impositum; quum haud dubie e re ipsa sermone patrio dicerentur *Thi Forsten*; antiquo germanico vocabulo *Forste*, quod hodieque apud Danos, Suedos, atque Norvagios primum numero significat; eademque significatione apud Anglos in Britannia est *Firsh*. So the prince of Anhalt is called in High Dutch, to this day, *furst von Anhalt*; and the marquis of Brandenburg, amongst his other titles, *furst zu Rugen*; and there are other instances produced by learned men of the continued use of this word in its primary signification. See *Selden's Titles of Honour* part. 2. c. 1. f. 53. — So likewise in the old Roman language, as has been frequently observed, the word *Princeps* originally signified no more, than one who was more eminent than the rest, qui inter suos eminebat: see to this purpose *Livy*, l. 2. where he speaks of Appius. In this same sense likewise *Phae-*  
*drus*,

prince, (as we shall hereafter call him) on these solemn occasions, nor security to his person, nor proper weight and authority to his decisions, he was always attended, and assisted in the administration of his province, by a choice and select band of the noblest, most robust, and hardy native-free-men of the country. These were a sort of honorary servants to him, they were his court, (as we should now term it,) his followers and constant *Companions*, the checks, as well as the executioners, of his power; they were his standing council in time of peace, and his guard and security in the day of battle. They obliged themselves by oath to be faithful to him, to defend his life at the hazard of their own; and even imputed to him

*drus*, remarkable for the purity of his style, speaks of the *Principes* of the Athenians, meaning no more by the expression than the *Primores*, or chief citizens.

\* *Tacit. De mor. Germ.* Centeni singulis principibus ex plebe *Comites* consilium simul, et auctoritas adsunt—Gradus quinetiam et ipse *Comitatus* habet, judicio ejus quem sectantur. Magnaque et comitum aemulatio, quibus primus apud principem suum locus: et principum, cui plurimi et acerrimi *Comites*. Haec dignitas, hae vires magno semper electorum juvenum globo circumdari in pace decus, in bello praesidium. Nec solum in sua gente cuique, sed apud finitimas quoque civitates id nomen, ea gloria est, si numero ac virtute *Comitatus* emineat. Expeſuntur enim legationibus, et muneribus ornantur, et ipsa plerumque fama bellum

him the whole merit of their actions, how great and illustrious soever they might appear. As there were different ranks, and degrees, of these *Companions*, according to the various offices, in which they were employed, this raised a spirit of continual emulation amongst them; who should be first in the prince's favour, and advanced to the superior order. Besides the esteem and affection of their patron, the only return which they expected for all their services, and fidelity, was to be plentifully entertained at his expence, and to be rewarded by him with such other marks of distinction, as their valour might be thought to deserve; namely, a horse for the war, a suit of armour, or some other present, which  
owed

bellum profigant. Cum ventum in aciem turpe principi virtute vinci; turpe comitatu, virtutem principis non adaequare. Jam vero infame in omnem vitam, ac probrosum, superstitem principi suo ex acie recessisse. [*Marcellinus*, l. xvi. will afford us a very remarkable instance of the strict connection between the prince, and his comites; for speaking of Chonodomarius, king of the Allmans, that he was obliged to surrender himself to the Romans, he adds, *Comitesque ejus ducenti numero, et tres amici junctissimi, flagitium arbitrati post regem vivere, vel pro rege non mori, si ita tulerit casus, tradidere se vincendos.*] Illum defendere, tueri, sua quoque fortia facta gloriae ejus assignare, praecipuum sacramentum est. Principes pro victoria pugnant: comites pro principe. Si civitas in qua orti sunt, longa pace et otio  
C torpeat;

owed its chief value to the good will and character of the donor. — Thus, as we are informed by *Diodorus Siculus*<sup>b</sup>, the first kings of Egypt had no mercenary servants, nor foreign, or home-born slaves to minister about their persons; but were always waited upon, and served, by the sons of the priests, and of the soldiery, that is, of the nobility of the country. Nor would it, perhaps, be difficult to shew, (did the occasion require it) that voluntary associations of this nature, entered into for attendance and service, on the one hand; and for entertain-

ment,

torpeat; plerique nobilium adolescentium petunt ultro eas nationes, quae tum bellum aliquod gerunt; quia et ingrata genti quies, et facilius inter ancipitia clarescunt, *magnumque comitatum* non nisi vi belloque tueantur. Exigunt enim principis sui liberalitate illum bellatorem equum, illam cruentam victricemque frameam; nam epulae, et quanquam incompti, largi tamen apparatus, pro stipendio cedunt. — The *σύμμαχοι*, and *συρραϊῶται* of the later Greek writers are the same, as these comites. — In *Bede*, they are usually stiled milites, and officio militari positi.

<sup>b</sup> L. i. p. 63.

<sup>c</sup> Such I take to have been that band of men, who went with, or accompanied, Saul to Gibeah, upon his first election to the kingdom of Israel. See 1 SAM. c. x. 26.

<sup>d</sup> From the words of *Tacitus*, as quoted above, one would be apt to conclude, that the number of these honorary servants, or *Companions*, was confined to an hundred — and so, perhaps, it might be in the original institution of them; tho' nothing, I think, is more evident, even from *Tacitus's* own expressions, than that, in his time at least, their number was vague and uncertain.

ment, reward, and protection, on the other, were common throughout most of the states of the antient world<sup>a</sup>.

12. The number of these *Companions*, notwithstanding the passage of Tacitus, which seems to confine them to a hundred, was certainly arbitrary and indefinite, depending chiefly upon the personal character of the prince himself, who, (as may be collected from the same author,) according to the degree of esteem, which he was in with his countrymen, was surrounded with a greater, or lesser, retinue of them<sup>a</sup>. —

Nor

certain. — For how can we otherwise interpret the following passages, *Magna Principum aemulatio, cui plurimi et acerrimi Comites*: *haec dignitas, hae vires magno semper electorum juvenum globo circumdari*? So again, *Ea gloria est, si numero ac virtute Comitatus emineat*? But there would be no room for this emulation, were their number confined to just an hundred. I should imagine therefore, that when the learned Roman saies, *Centeni* singulis principibus ex plebe *Comites* adsunt, his design is rather to point out to us their title, or distinguishing name of honour, than to specify their precise number. — In like manner the *Centum-viri* at Rome still retained their old appellation, even after their number was increased to one hundred and eighty; and that known division of our counties into *hundreds* subsists by this name, even to this day, though each of them, very different from their original institution, consists of many hundred families. *Kirchmaier*, in his notes upon the above-mentioned passage of Tacitus, has these words — *restituendum vero reor, certi singulis ex plebe comites. Ubi enim vel vestigia saltem apud Tacitum, aut alios, de comitibus centenis*? Could this Gentleman have

Nor is it, perhaps, entirely clear, by whom they were appointed; whether by the general council, which elected the prince, or by a particular designation of the province, in which their patron was to take up his residence—tho', certainly, the most probable opinion is, that the whole affair was entirely voluntary on both sides<sup>b</sup>. The freemen offered themselves to the guard, service, and assistance of their governors; and these latter, at their own discretion, selected such a number from amongst them, as they were able to entertain, and whose character best pleased them. For as it was the reputation of valour, which had recommended the prince to the superior station, which he possessed; this quality alone, in a warlike age, would soon fill his court with a multitude of followers; every one would be ambitious to put himself under the command, and protection, of a person, whose merit had rendered him worthy

produced the authority of any one antient manuscript to confirm his conjecture, I believe, he would long since have persuaded the learned to have admitted his correction, as the true reading.

<sup>b</sup> Thus the *Thetes* of Athens; the *Penestæ* of Thessaly; and the *Clientes* amongst the old Romans, might all fix upon what patrons they pleased; tho', after the choice was made, it was looked

thy the most distinguishing honours, which his country could bestow upon him.—Here then it was, that the hardy and ambitious youth might expect to have before their eyes an example for their imitation ; and, from their master's skill and experience, be early initiated into the art of war—the consequence of all which must necessarily be, what we find in fact it was, that the number of these *Companions* would be indeterminate, sometimes greater, and sometimes less, according to the reputation of the prince, whom they obeyed—and this, likewise, is an indisputable argument against any particular appointment of them by the public. The nobility and honorary princes (for such there were) might, unquestionably, join themselves to whose court soever they pleased ; nor was it reckoned any disgrace to them, to serve amongst their meaner brethren, and to attend the persons of those, whom their country

looked upon as infamous (unless some very good reason could be assigned for it) to quit the service of those, under whose protection they had once thrown themselves : as the patron, likewise, on his side, entirely lost his reputation, if he deceived and deserted the interest of his client. Si patronus clienti fraudem fecerit, sacer esto, we are told, was a law of Romulus.

country had honoured with a command over its members<sup>c</sup>.

13. It is not sufficiently agreed amongst the learned, what (in the language of their own country) was the original and proper name, of these *Companions*, who so faithfully attended the persons of our antient German princes'. Some will have them to

<sup>c</sup> *Tacitus, De mor. Germ.* Insignis nobilitas, aut magna patrum merita, principis dignationem etiam adolescentulis assignant. Ceteris robustioribus, ac jam pridem probatis, adgregantur; nec rubor inter *Comites* adspici.

<sup>a</sup> *Tacitus* constantly gives them the name of *Comites*; probably, because he regarded them, as a similar institution to those more honourable servants, or friends, who, a little before his time, [perhaps their original might be traced up even to the earliest ages of the Roman state] were wont to accompany the Roman generals in all their expeditions, and were called by this appellation in the language of his country. Thus *Suetonius*, speaking of *Tiberius*, afterwards emperor, tells us, that being *Pecuniae parvus et tenax, Comites peregrinationum, expeditionumque nunquam salario, cibariis tantum sustentavit*. [This was the very mode of the German princes] Una modo liberalitate, ex indulgentia vitrici, persecutus, cum tribus classibus factis, pro dignitate cujusque, primae sexcenta sestertia, secundae quingenta distribuit, ducenta tertiae. How conformable is this to what we have before observed from *Tacitus*, *Gradus quinetiam et ipse comitatus habet, judicio ejus quem sectantur*? Instances of this kind of *Companionship* are more common in the middle and lower empire. For, to use the words of our very learned countryman *Mr. Selden (Titles of Honour, Part ii. c. 7.)* "The emperors antiently had about them, beside their greatest officers of state, select attendants of court, known by the name of *Companions*, or *Companions* and *Friends*. They were usually made of such as were Consular, or Praetorian, senators; and sometimes out of men of less dignity, and are stiled the *Roman college*"

to have been called *Graves*, which term, amongst its other significations, according to the learned *Cluver*, has that of a *Companion*, or *Follower* annexed to it<sup>b</sup>.—But this conjecture cannot easily be admitted, as the most usual interpretation of this word is *Governour*<sup>c</sup>; in which sense, it is by no means applicable to these *Companions* of the Roman historian.

“college by the emperor Valerian, in his oration to the senate touching Macrianus. *In centubernium imperatoriae majestatis adfiscere* is used by *Lampridius* for the making them. They waited and assisted the emperor in his counsils and actions, and they were divided also into their several ranks of dignity. There was a rank of the first dignity, another of the second, and another of the third. Testimonies of this division are obvious in both the Codes, and especially in *Eusebius*, where he speaks of them under Constantine. But whence the beginning of them, and of this division, is to be derived, is not agreed on clear enough among learned men.” *Cluver. Germ. antiq.* l. i. p. 375. is of opinion, that the Romans borrowed this institution, as they did many others, from the Germans, who, about Constantine’s time, began to crowd into the court and armies of the Roman emperors.—But, as I hinted before, the original of these *Companions*, amongst the Romans, must in all probability be traced higher than either *Selden* or *Cluver* seem to place it—and why may we not suppose, that it grew, by degrees, out of that relation of *Clients* and *Patrons*, which we know to have been as old, at least, as their state itself; and may, probably, conclude to have been much older, as Romulus rather imitated the institutions of the neighbouring nations, than made new ones of his own invention?

<sup>b</sup> *Cluver. Germ. antiq.* l. i. p. 374. *Comitis quoque adpellationem, quae est Germanice Grave et Greve, haud novam, nec nuper repertam existimo, nihilque aliud significare quam Comitum, five Sectatorem.*

<sup>c</sup> Vid. *Spelman. et Du Fresne Glossar.* ad vocem.

torian. I imagine, therefore, that the *Ambacti* of the Gauls, considering the original affinity between the two nations, may bid fairest to be their primitive and true denomination. The office, and employment of both was undoubtedly of a similar nature; they were a kind of honorary servants, or dependants, encouraged, protected, and advanced by those, whom they followed; and, in return, absolutely devoted to the persons, and interests, of their patrons. For, as *Caesar* observes, “every Gaulish noble-  
 “ man, in proportion as his reputation,  
 “ and power, encreased with his country-  
 “ men, was attended by a greater retinue  
 “ of

<sup>a</sup> *Caesar, Bell. Gall. L. 3.* Eorum [equitum] ut quisque est genere copiosius amplissimus, ita plurimos circum se *Ambactos*, *Clientesque* habet; hanc unam gratiam, potentiamque noverunt. To the like purpose is what *Polybius* tells us of the same nation, lib. 2. Περὶ δὲ τὰς ΕΤΑΙΡΙΑΣ μεγίστην σπουδὴν ἐποιεῖντο, διὰ τὸ καὶ φοβερώτατον καὶ δυνατώτατον εἶναι παρ’ αὐτοῖς τῆτον, ὃς ἂν πλείους ἔχειν δοκεῖ τὰς ΘΕΡΑΠΕΥΟΝΤΑΣ καὶ συμπεριφερομένους αὐτῶν. See farther *Caesar. Comment. 6.* *Comites familiaresque* ejus (*Ambiorigis*) equitum nostrorum vim, etc. Here ’tis evident, that by *Comites* the author means the same persons, whom he had before styled *Ambacti*.

<sup>c</sup> *Cluver. Germ. antiq. l. i. p. 68.* Keronis Monachi ad divi Galli Glossarium habet: *Minister, Ambact*: ministraverit, ambactit: et ita *Otfridus* in Evangelio, l. i. c. 25. *Ambachten*, pro operari. — Hinc recte vocabulum illud Barbaro-latinum *Ambactia*, quod Germanis erat *Ambacht*, in Burgundiorum legibus ponitur

“ of *Ambacht*, or clients; this was the only mark, which their ambition flew at, and this the highest instance, which they could exhibit, of their popularity.” But this is the very description, which we have before given, of our German *Companions*, and their princes—and what confirms this conjecture is, that this sort of mutual relation between the great men, and others of an inferior rank, still retains the antient name in many towns of Germany and Flanders, where such kind of dependants are, to this day, called *Ambachtmen*. Tho’ I have, already, been longer upon this point, than my reader may, at present, think necessary, yet

nitur pro *Opera*.—And in this point *Spelman*, as well as all other antiquarians are agreed, that the word *Ambassador* was derived from hence. *Du Fresno* in voce *Ambactus* observes—Remanet etiamnum in Germania, et Belgio, vocabuli vestigium. Nam in civitatibus passim Flandricis, aliisque nonnullis *Ambachten* ejusmodi corpora dicuntur, quae unum sibi legunt, cujus auctoritatem perinde atque capitis sui venerantur. *Lexicon Germanicum* vetus apud *Lipsum* l. iii. Epistola 44. *Ambachtmen*, ministri. *Lindenbrogius* etiam *Ambacht*, operari interpretatur. The word is extant in the same sense in the Anglo-Saxon laws of *Ethelbert*—where it is said, *Gif Cyninges ambiht*, *Smith*, etc. sc. Si quis occiderit famulos fabri, qui regi ministraverit, vel, qui inter regis ambactos fuerit, etc. and still more early, we find the word in the version of the gospels by *Ulphilas*. Thus *John* 18. 3. *ix τῶν ἀρχιερέων ὑπηρέται*—is translated *thize Gudjane Andbatans*—sc. the servants of the high-priests.

! *Caes.*

yet I cannot persuade myself to quit it, without observing one thing farther of these *Companions* or *Ambachts*; that, in the southern parts of Gaul, they were known by the particular name of *Soldurii*—For these were persons, “ who, as the same *Caesar* tells us, “ were absolutely devoted to “ the service of those, to whose friendship “ they had once joined themselves; they “ enjoyed their prosperity together with “ them, and if their patron fell in battle, “ they were either killed with him, or else “ slew

<sup>1</sup> *Caes. De Bell. Gall.* l. iii. Alia ex parte oppidi Adcantuannus, qui summam imperii tenebat, cum 600 devotis, quos illi *soldurios* appellant; (quorum haec est conditio, ut omnibus in vita commodis una cum his fruantur, quorum se amicitiae dederint; si quid iis per vim accidat, aut eundem casum una fiant, aut sibi mortem consciscant: neque adhuc hominum memoria repertus est quisquam, qui, eo interfecto cujus se amicitiae devovisset, mori recusaret :) cum his Adcantuannus, etc.—In like manner the antient Spaniards, or Iberians (another of the Celtic nations) as *Valerius Maximus* observes, l. ii. c. 3. Nefas esse ducebant praelio superesse, quum is occidisset pro cuius salute spiritum devoverant. Laudanda animi praestantia, quod fidem amicitiae constanter praestandam arbitrantur. To the same purpose *Plutarch* in his *Life of Sertorius*; ἴθις δ' ὅντος Ἰβηρικῶν, τὰς περὶ τὸν ἀρχαῖον τέταρτους συναποθήσκειν αὐτῷ πισόντι, καὶ τὸ τοῦ ἐκείνου βαρβάρων ΚΑΣΠΕΙΣΙΝ ὄνομαζόντων, τοῖς μὲν ἄλλοις ἡγεμόσιν ὀλίγοι τῶν ὑπασιῶν καὶ τῶν ΕΤΑΙΡΩΝ, [here we have our German Comites again] Σερτορίῳ δὲ πολλὰι μυριάδες ἀνθρώπων κατισπυκνόντων ἑαυτὲς ἠκολούθη. The sacred band amongst the Thebans, and other instances, might be produced of a like nature from other nations.

• *Caesar*

“flew themselves; nor was an instance to  
 “be produced of any one of them ever sur-  
 “viving the loss of their friend, and ma-  
 “ster.”

14. But besides the administration of justice, there was likewise another privilege, or office, which peculiarly belonged to the ancient German princes—I mean, that of annually distributing, or dividing, the land amongst the several families of their territory<sup>a</sup>. Our ancestors were not, as yet, become acquainted with the softer blandishments of ease,

<sup>a</sup> *Caesar Bell. Gall. l. 6. c. 22.* Agriculturae non student Germani; majorque pars victus eorum lacte, et caseo, et carne consistit: neque quisquam agri modum certum, aut fines proprios habet; sed magistratus, ac principes, in annos singulos gentibus, cognationibusque hominum, qui una coierunt, quantum eis, et quo loco visum est, attribuunt agri, atque anno post alio transire cogunt. Ejus rei multas afferunt causas; ne assidua consuetudine capti studium belli gerendi agricultura commutent; ne latos fines parare studeant, potentioresque humiliores possessionibus expellant; ne accuratius ad frigora atque aestus vitandos aedificent; ne qua oriatur pecuniae cupiditas, qua ex re factiones dissensionesque nascuntur; ut animi aequitate plebem contineant, cum suas quisque opes cum potentissimis aequari videat. vid. etiam *Com. Bell. Gall. 4. 1. Tacit. de Germania*, c. 28. Agri, pro numero cultorum, ab universis per vices occupantur, quos mox inter se secundum dignationem partiuntur. Facilitatem partiendi camporum spatia praestant. Arva per annos mutant, et superest ager. Nec enim cum ubertate, et amplitudine soli labore contendunt ut pomaria conserant, et prata separent, et hortos rigent. Sola terrae seges imperatur.

ease, peace, and luxury; nor had the primitive simplicity of their manners been taught to yield to those splendid vices, which gold and silver have, too generally, been found to introduce with them. The wealth, which they rejoiced in, was real; consisting chiefly in the number of their flocks and herds, and in the multitude of their dependants and slaves — had they but provision sufficient to maintain themselves, their families and their retinue, in such a manner, as became the dignity of the character they sustained in the community, they seem to have been very little solicitous about acquiring the vain and pompous superfluities of life. Their commerce with the imperial city of Rome had not, as yet, persuaded them to condemn the sober, and more frugal dictates of plain and uncorrupted nature. They had no notion of accumulating vast quantities of useless land, to be disposed of in building magnificent edifices, and to be laid out in sumptuous, and wide-extended, gardens. As the rank  
they

<sup>a</sup> *Cluver. Germ. Antiq.* l. 1. p. 105. *Quamvis frequens bellorum trans Rhenum memoratio est apud Ammianum Marcellinum,*  
nulla

they bore in their country was entirely owing to their personal merit, it had not entered into their thoughts, to endeavour to transmit enormous estates of inheritance to their posterity, in order to maintain them in a lazy splendour, riot, and luxury, without any regard to their future bravery and virtue.

15. The natural situation of their country, (defended by seas, rivers, and vast uninhabited tracts of land) together with the high opinion, which they entertained of their own valour, sufficiently securing them from any dread of foreign invasions, they generally lived dispersed, up and down the country, in scattered dwellings—as, we are told, the ancient Athenians did, before their lawgiver Theseus persuaded them to leave their divided habitations, and to settle together within the same walls. — Nor does it appear from any evidence, which I can find, that, even in the ages of the lower empire, fear had taught them to build fenced cities, towns, or castles to live in.

Their

nulla tamen urbis alicujus, vel oppidi, vel castelli, vel muniti a Germanis extructi, sit mentio: locorum autem, quos

Their dwellings, therefore, were, for the most part, in caverns under ground; or in a kind of extemporaneous hutts composed of turf only, or of the rough branches of trees plaited, and interwoven together — so that at the end of the year they left them without the least difficulty or regret, removing into other parts of their territories, as plenty of pasture, or fresh forage, invited them. For as the riches of each nation entirely consisted in its numerous flocks, and herds, they were obliged to regard the proper accommodation of their cattle, rather than

ties occasio, vel usus postulat, eadem descriptio, quae vicorum ac villarum apud Caesarem, Tacitum, et alios. Ita *Tacit. Germ. c. 16*. Nullas Germanorum populis urbes habitari satis notum est, ne pati quidem inter se junctas sedes. Colunt discreti, ac diversi, ut fons, ut campus, ut nemus placuit. Vicos locant, non in nostrum morem connexis et cohaerentibus aedificiis; suam quisque domum spatio circumdat, five adversus casus ignis remedium, five inscitia aedificandi—materia ad omnia utuntur informi, et citra speciem, et delectationem—ne caementorum quidem apud illos aut regularum usus.

Does not this description of the manner of life of the old Germans call to the learned reader's mind the beginning of the sixth satyr of *Juvenal*?

Credo Pudicitiam, Saturno rege, moratam  
In terris, visamque diu; cum frigida parvas  
Praeberet spelunca domus, ignemque laremque  
Et pecus et dominos communi clauderet umbra.

or, these lines near the beginning of *Ovid's Metam.*?

Turn

than to consult their own conveniency, in their frequent change of place<sup>b</sup>. But we must not falsely imagine, that their motions, at these times, were lawless and tumultuary; and that every man seized upon the spot of ground, which he liked best: on the contrary, the whole business was transacted in the most regular, and orderly manner, according to the particular designation and appointment of their prince; “to the  
 “more, was given more inheritance; and  
 “to the fewer, less inheritance; every  
 “man’s inheritance was to be in the place,  
 “where

Tum primum subiere domus; domus antra fuerunt,  
 Et densi frutices, et junctae cortice virgae.

But what is more to my present purpose, the *Geographer* especially imputes the frequent change of place in these nations to the same causes, as I have assigned for it, *Strabo*, l. vii. Κοινὸν δ’ ἔστι πάντας τοῖς ταύτη, τὸ περὶ τὰς μεταναστάσεις εὐμαρὲς, διὰ τὴν λατότητα τῷ βίῳ, καὶ διὰ τὸ μὴ γεωργεῖν μηδὲ θησαυρίζειν, ἀλλ’ ἐν Καλυβείοις οἰκεῖν ἡμέτεροι ἔχουσι παρασκευήν. τροφὴ δ’ ἀπὸ τῶν θρεμμάτων ἢ πλείον, καθάπερ τοῖς Νομάσι· ὥς’ ἐκείνους μιμνήμενοι, τὰ οἰκία ταῖς ἀρμάξαις ἐπάραντες, ὅποι αὖ δόξῃ τρίτοντας μετὰ τῶν βοσκημάτων. Much to the same purpose is what *Aristotle* has observed, (*Politic.* l. i. p. 2.) where, speaking of the condition of the first mortals, he says, ἀναγκαῖον δ’ ὄντος μεταβάλλειν τοῖς κτήσι διὰ τὰς νομάς, καὶ αὐτοὶ ἀναγκαζοῖσθαι συνακολουθεῖν, ὥσπερ γεωργίαν ζῶσαν γεωργῶντες.

“ where his lot fell, according to the tribes  
 “ of his fathers, there was he to inherit.”

16. What has been observed by a late author upon the wisdom of the Jewish constitution in that equal, or rather proportionable, division of the conquered country, which was made by Joshua, and the princes of Israel, amongst the families of the twelve tribes, may with the same justice, and propriety, be applied to the instance before us; for by this annual division of their territory, “ our German ancestors provided against all ambitious designs of private persons, or persons in authority, against the public liberty: for no person in any of the provinces, or throughout the whole German nation, had such estates and possessions; or were allowed by the constitution to procure them, that could give any hopes of success in oppressing their brethren and fellow subjects. They had no riches to bribe indigent persons to assist them, nor could there at any time be any considerable  
 “ number

“ number of indigent persons to be cor-  
 “ rupted. They could have no power to  
 “ force their fellow subjects into a tame  
 “ submission to any of their ambitious  
 “ views. The power in the hands of so  
 “ many freeholders in each province, was  
 “ so unspeakably superior to any power in  
 “ the hands of one, or of a few men, that  
 “ it is impossible to conceive, how any such  
 “ ambitious designs should succeed, if any  
 “ persons should have been found so weak  
 “ as to attempt them. Besides, this *annual*  
 “ provision wisely cut off the means of lux-  
 “ ury, with the temptations to it from ex-  
 “ ample. It almost necessarily put the  
 “ whole nation upon frugality, and gave to  
 “ every one such a property with such an  
 “ easy state of liberty and independence,  
 “ that they had sufficient reason to esteem  
 “ and value them, and endeavour to pre-  
 “ serve and maintain them.”

17. Let it not, however, be imagined  
 that the prince was left to the sole guid-  
 ance of his own arbitrary will, in making  
 these

\* Lowman, of the civil government of the Hebrews, p. 48. See  
 likewise the quotation from *Caesar*, above, p. 43.

these yearly divisions, or allotments of their territory; on the contrary, he was constantly assisted in this, as he was in all other matters of any moment, by his *Companions*, and counsellors. He was obliged, we are told, in this distribution, to have especial regard to each man's rank, or *Nobility*—for so I chuse to interpret the words made use of by the Roman historian upon this occasion\*, however improper the term may, at first view, appear in a country, where all its native inhabitants were, at this time, most undoubtedly equal. But I shall easily explain my meaning.—The antient Germans were extremely grateful to their benefactors, that is, to all those good and valiant men, who, by their brave and noble exploits in the public service, had deserved well of their country. They payed them the greatest personal deference and respect, whilst they were alive, nor were their merits forgotten after their decease; for, be-  
sides

\* *Secundum dignationem partiuntur.*

† So *Tacitus* acquaints us, that in Vespasian's time Velleda, on account of her great merit and service to her country, was looked upon by them as a deity—sed et olim Auriniam, et complures alias, venerati sunt, non adulatione, nec tanquam facerent deas—nor can we question, but that they were equally regard-  
ful

sides the reverence, which they owed to them as heroes, or a sort of beings of a superior rank and order<sup>b</sup>; their posterity, moreover, were put upon a level with the princes themselves<sup>c</sup>, and treated with equal honour and regard. Like them they were attended with a numerous train of companions; and, where every thing else was equal, were preferred, we may suppose, to other candidates in the distribution of all offices of trust and power. And that they might the better support the dignity of the character, which it was incumbent upon them to sustain, they were both enriched by the voluntary gifts and contributions of their grateful countrymen, and had, likewise, a larger proportion of land assigned to them for the maintainance of their household, when the annual divisions were made. The German notion of nobility seems, therefore, not to have been unlike that of Socrates—that the virtues of the parent raised,

ful of their benefactors, as they were of their benefactresses. Tacitus would afford us examples enow, could there be any question made of the fact. See however (*Annal.* 2. in fine) what he has said of Arminius.

\* *Tacit. de Germ.* c. 13. *Insignis nobilitas, aut magna patrum merita principis dignationem etiam adolescentulis assignant.*

raised, as it were, and exalted the blood of all his descendants<sup>4</sup>.

18. This grateful, and generous, manner of proceeding towards the posterity of their deceased benefactors, could not fail of being attended with the most signal advantages to the commonwealth, in general; for by paying these obliging tokens of regard to the memory of the dead, the living were more strongly animated and encouraged to tread in the same arduous steps of glory, in hopes of obtaining the same illustrious marks of distinction. Let it, however, be observed to the credit of our brave northern ancestors, that this sort of nobility was no protection, nor sanction to a life of laziness, luxury, and inactivity, whenever the voice of honour, or the public interest invited them to enter upon any military expedition. They revered, indeed, the children of those great men, who  
had

<sup>4</sup> Socrates, whilst his wife Xantippe was yet alive, took into house with him, and maintained, Myrto, daughter of Aristides surnamed the Just: Οἱ μὲν γὰρ ἐξ ἀγαθῶν γονέων εὐγενεῖς εἶναι νομίζουσι, καθάπερ καὶ Σωκράτης, διὰ τὴν Ἀριστείδου ἀρετὴν καὶ τὴν θυγατέρα αὐτῆς γενναίαν εἶναι. This is preserved as a fragment of Aristotle's treatise, Περὶ εὐγενείας — 'tis said at least to be so, tho' Plutarch and others have questioned the genuineness of it—

had formerly been at the head of their tribes; or who had led on the armies of their country to conquest and dominion; but this reverence continued only, whilst they imitated the examples of their forefathers, and marched in the same difficult paths of renown. For however noble the young men might imagine themselves to be; and however pure, and unmixed the line of their genealogy might have been preserved, their rough, and unpolished countrymen, who were guided by the mere dictates of nature, despised a nobility, which had no other support than the imaginary basis of ancestral merit\*. They knew no other way to approach the shrine of true Honour, than thro' the temple of valour and military skill. The most distinguished birth, therefore, could not exempt its owners from the same common task of labour and hazard, which the meanest of their brethren were obliged to undergo, in order

Plutarch makes Myrto the niece of Aristides, and not his daughter, as the fragment relates.

\* So *Lucan* in *Panegyrico*, as I find him quoted in *Selden's Pref.* to his *Titles of Honour*.

perit omnis in illo  
Nobilitas, cujus laus est in origine sola.

order to recommend themselves to the favourable notice of their countrymen — like them the young nobility entered themselves into the retinue of the provincial princes, and other persons, whose reputation had rendered them considerable; they became their voluntary servants and attendants<sup>b</sup>; and, spurred on by their example to a noble emulation, endeavoured by their own personal merit and bravery, to support the dignity of the character, which had been handed down to them from their forefathers.

19. Nor was the power of the prince limited only to the civil administration of his province; but extended itself, like that of the Roman consuls under the antient republic, to the direction and management of its military state likewise\*. The sword and the gown were not reckoned incompatible in those simpler, perhaps, tho' not less honest, ages of the world; before war became a science, wherein superior skill and conduct frequently triumphed over  
ver

<sup>b</sup> So *Tacitus*, speaking of these young nobility, tells us, *cacteris robustioribus, ac jam pridem probatis, aggregantur: nec rubor inter comites aspicitur*.

\* Instances

ver strength and courage; and law an art, which was to be learnt, distinct from the rules of natural equity.—In a word, it was the office of these princes, (or kings, as the Romans sometimes affected to call them) to take care of every thing, which might in any ways concern the common welfare of the canton, over which they were appointed to preside. They were to judge it in time of peace, and to lead its troops in the day of battle.—This conjunction of civil authority with military command might, I believe, be shewn to have been common to almost all nations, in the first ages of the world; “it was so well known in the Hebrew constitution, that both were united in their judges, their kings, and all their chief magistrates<sup>b</sup>.” The heads of their tribes, in particular, (an office exactly resembling that of our antient German princes) were captains in war, distributors of justice to their countrymen in times of peace, and counsellors to their king, after the days of Saul

<sup>a</sup> Instances of this consular-power of the antient German princes are every where to be met with in Cæsar, Tacitus, and Marcellinus.

<sup>b</sup> See Lowman of the Hebrew government, p. 73.

Saul — “ If Dan was to judge his people as  
 “ one of the tribes of Israel, he was like-  
 “ wise constituted one of the heads of thou-  
 “ sands in Israel.”

20. For it may be properly enough re-  
 marked, that however numerous the public  
 armies of these nations were; and numerous  
 they could not but be, where all the native  
 freemen were soldiers of course, the troops  
 of every tribe, or province, always assembled  
 under the same standard, marched toge-  
 ther, fought in one body under their own  
 officers, and were judged by the same per-  
 sons, agreeably to their own laws and cus-  
 toms.—This was an excellent expedient  
 to encourage them to behave with vigour,  
 and resolution, in the cause of their coun-  
 try, encouraged, as they were, by the ex-  
 ample, and animated by the mutual ex-  
 hortations of their nearest friends and rela-  
 tions,

\* *Tacit. de Germ. c. 7.* Quodque præcipuum fortitudinis inci-  
 tamentum est, non casus, nec fortuita conglobatio, turmam aut  
 cuneum facit, sed familiae et propinquitates. So when the Hel-  
 vetii left their country to plant themselves in some other place,  
 each of the four Pagi marched distinct from the rest of their bre-  
 thren: this is evident from what Caesar tells us of his attacking,  
 and cutting off one of these Pagi, after the other three had crossed  
 the Arar. See *Comm. Gall. l. i. c. 12.*

• *Tacitus*

tions, whom they saw engaged in the same common dangers with themselves<sup>a</sup>.—It would be difficult, perhaps, if not impossible, to describe the exact regulation, order, and distribution of the antient German militia: tho', I believe, I should not much err in my opinion, was I to assert, that as the forces of every district, or tribe, were under the superior command of its respective prince; so the whole corps was divided into separate bands or companies of a hundred men each, under the command of a distinct officer of its own, who was denominated the *Leader of the hundred*<sup>b</sup>, and was generally the oldest man of the troop, succeeding to this office by vertue of his age. This, we are told by good authority, was the model of the antient armies of the Franks; and, if so, we may venture to conclude, that in this respect, as well as in most others,

<sup>a</sup> Tacitus ut supra. c. 6. speaking expressly of their armies, and telling us that their chief strength lay in foot, adds, definitur et numerus; *Centeni* ex singulis Pagis sunt; *idque ipsum* inter suos vocantur; et quod primo numerus fuit, jam nomen et honor est. After quoting this place Cluv. Germ. antiq. l. i. p. 114. adds, Nempe, *thi Hunderter* adpellabantur. Posteriores circa Rhenum Germani Latinum vocabulum in linguam suam adfiscientes, ipsas terras dixerunt *Centen*, et *Gentgerichte*, comites vero illos centenos, *Centgraven*.

<sup>b</sup> Boulain-

others, the different nations of Germany all resembled one another\*. Should it, however, still be insisted upon that it is more probable, that the distribution of our ancient northern militia was into distinct corps of 1000, 100, 50, and 10 men each, with their respective officers at their head, I should not be much displeased with the opinion—seeing such, in reality, was the earliest division of the armies of many other nations, namely, of the Romans, the Tartars<sup>d</sup>, the Philistines, and the children of Israel: amongst the latter of whom we are told that, “Moses took the chief of the tribes, wise men and known, and made them captains over thousands, and captains over hundreds, and captains over fifties, and captains over tens, and officers among the tribes.” For both in this, and many other particulars of the Jewish polity, as has been frequently remarked by the best, and most knowing, enquirers,

\* *Boulainvilliers* in his *Memoires Historiques*, p. 24. La milice Salique, ou Françoisse, consistoit toute en infanterie [plus penes *Peditum roboris*, says *Tacitus*] et étoit divisée en centaines, et chacun avoit un officier de centenier, en Latin; Atungin, en langue Franque ou Teutonne; lequel étoit toujours le plus vieux de la troupe; raison pourquoi les noms de centenier et senieur sont employez

quirers, "the wisdom of God seems to have confirmed antient customs, rather than have made new constitutions'."

21. But amongst the other prerogatives of the prince, it must not be omitted, that he was to preside in the general assembly of his province: for tho' I cannot find, that either the Greek, or Roman, authors have taken the least notice of these particular meetings of each Pagus or district, as distinct from that of the whole state, yet is it highly probable that there were such; in as much as each canton, like the tribes of Israel, was, in many respects, independent of all the rest, and under its own proper government. But this conclusion will receive additional strength, when we come to take notice of the civil polity, which they afterwards settled in Britain.—Another privilege of the prince (for I would not willingly pass by any of them) was, that he might marry two or more wives, if he pleased; tho'

employez l'un pour l'autre par les auteurs du tems, et même dans les chartres.

<sup>a</sup> See Mr. *Petis de la Croix's* *life of Genghizkan*, p. 81. as likewise *the Laws of the Visigoths*, lib. 2. tit. 2, l. 26. See likewise 1 Sam. xxix. 2.

<sup>c</sup> DEUTERONOM. i. 15.

<sup>f</sup> *Lquman*, p. 160.

<sup>e</sup> See

tho' this was always looked upon, rather, as a matter of favour to the later wives and their relations, than as the effect of an intemperate appetite<sup>a</sup>.—With respect to the prince's revenues, besides that larger share of land, which was assigned to him in the general allotment of the territory of his province, he had, likewise, a certain proportion of all fines paid to him<sup>b</sup>, which in those early times must have amounted to something considerable, being imposed (as among the Romans, and other nations<sup>c</sup>) for almost

<sup>a</sup> See above, p. 21. in the notes.

<sup>b</sup> *Tacit. de German. c. 12.* sed et levioribus delictis, pro modo poenarum, equorum, pecorumque numero convicti multantur. Pars multæ regi vel civitati, pars etc. and again c. 21. Luitur homicidium certo armentorum et pecorum numero — They could be mulcted in nothing else, but their cattle. For gold and silver they had none — nor could they forfeit their land, having only a temporary property in it.

<sup>c</sup> That this method of commuting punishments was frequently practised by the antient Romans, *Festus* will inform us, voce *Oves*; and *Agellius* — as to the Hebrews, when the law says, an eye for an eye, a tooth for a tooth, etc. the best commentators explain it in this manner, the putting out an eye shall be punished with the valuation of an eye, etc. At what rate every limb was estimated by our Anglo-Saxons may be seen at large in their laws still extant. Much after this manner, likewise, I suppose, the *Lex talionis*, or law of retaliation, is to be explained in the twelve tables. — The passage of *Agellius* which I had my eye upon above, is in l. xx. 1. Quidam Lucius Veratius fuit, egregie homo improbus, atque immani vecordia. Is pro delectamento habebat os hominis liberi manus suæ palma verberare. Eum servus sequebatur crumenam plenam assium portans: et quemcunque depal-

almost all crimes, except treason and adultery, which were ever punished, the former with the ignominious death of hanging, the latter with the most severe, and contemptuous, corporal punishment. If, after all, there was any deficiency in the income of the prince, so as to be insufficient to support the dignity of his character, it was amply made up by the voluntary contributions of those, over whom he was chosen to preside<sup>d</sup>. — Our ancestors were not, as yet, become politicians enough nicely to distin-

depalmaverat, numerari statim secundum xii tabulas quinque et viginti asses jubebat. It may not be disagreeable to the reader to have it here observed, that, on account of the scarcity of money in the first ages of the Roman commonwealth, it was provided by the laws, that no greater fine should be ever imposed upon a citizen at one time, than two oxen and thirty sheep; that each ox should be estimated at 100 pounds of signed brass (centussibus) and each sheep at 10 pounds of the same, or decussibus. In Greece the price of such an injurious boxing, or buffeting, as Veratius was guilty of, seems to have been estimated at a much higher value, i. e. at half a talent, or 300 drachmae, as my very learned friend Dr. Taylor (not. ad Dem. Orat. c. Mid.) has well remarked, not only from Demosthenes's compromising the blows, which he had met with from Meidias, at that sum, but more especially from a humorous story told of Diogenes the Cynic, and the same Meidias, to be seen in *Laertius's* life of that philosopher.

<sup>d</sup> *Tacit. de German. c. 15.* Mos est civitatibus ultro, ac viri-  
tim, conferre principibus vel armentorum vel frugum, quod pro  
honore acceptum etiam necessitatibus subvenit: but what pleased  
them most of all was, as the same author observes, the gifts, which  
were sometimes sent them, as a public acknowledgment, as it  
were, of their great merit, from the neighbouring nations—gaudent

we find, in fact, to have been constituted by them; in which every native freeman, of every province of the state, who was arrived at the proper age, and had not forfeited his right to this privilege by cowardice, or some other misbehaviour to the public, might, if he pleased, be present<sup>a</sup>. This then was the crown of the building, which added strength, proportion, and ornament to the whole edifice—I have said, that every native freeman of every district of the state had a right to be present in this sovereign council; and, if we duly reflect upon what has been before observed of the annual division of the land amongst all the free-born members of every province, we shall soon perceive, that the supreme power could not possibly be lodged any where else, but in the body of the whole nation assembled together. For, as a late author has justly described

<sup>a</sup> *Tacit. De mor. Germ. c. 11. De majoribus rebus consultant omnes ---- coeunt, nisi quid fortuitum, et subitum inciderit, certis diebus cum aut inchoatur Luna aut impletur—* Illud ex libertate vitium, quod non simul nec jussi conveniunt, sed alter et tertius dies cunctatione coeuntium absuntur. ut turbæ placuit, confidunt armati. So *Cluver, Germ. Antiq. l. i. p. 316.* speaking of the civil government instituted in the different states of Germany—In his pura puta *Democratia* merito dici debet. quidpe summa imperii potestas, majestasque apud universum erat populum. In quo

scribed it, "property is the natural foundation of power, and so of authority; hence the natural foundation of every government is laid in the distribution of the lands, or territories, belonging to it to the several members of it. If the prince is proprietor of the lands, as in some eastern governments, such prince will be absolute; for all who hold the lands, holding them of the prince, and enjoying them at his will and pleasure, are so subject to his will, that they are in a condition of slaves, not of free-subjects. If the property is divided among a few men, the rest holding of them, and under them, as vassals, the power and authority of government will be in the hands of those few men, as a nobility, whatever authority may be lodged in the hands of one or more persons for the sake of unity

quo licet ordines diversi, alius alio superior, principis, sacerdotum, primorum five procerum, nobilium et plebis, tamen in conciliis ac conventibus sine jure aut dignitate *πρωτοβρίας*, ut *Turbae placuit*, armatus quisque confedit; sine jure *πολιμίας*, *prout aetas cuique*, *prout decus bellorum*, *prout facundia erat*, pro se quisque sententiam dixit.

\* *Tacit. ut supra.* c. 16. Scutum reliquisse praeceptum flagitium, nec aut sacris adesse, aut concilium inire ignominioso fas.

\* Lowman,

“ty in counsel and action; but if the pro-  
 “perty be generally divided near equally  
 “among all the members of the society,  
 “the true power and authority of such go-  
 “vernment will naturally be in all the  
 “members of that society, whatever form  
 “of union they may have for the better di-  
 “rection of the whole as a political bo-  
 “dy.”—It would, certainly, be going too  
 far to assert, that every native free-man was  
 always present at these general assemblies  
 of his nation—it being sufficient for our  
 purpose to observe, that he had a right to  
 be there, and might be present at the pub-  
 lic deliberations, if he pleased: tho’ the most  
 usual method, probably, was to send the  
 elders of each province, (the leaders of  
 their hundreds perhaps,) as their deputies, or  
 repre-

\* Lowman, p. 33.

† Grotius *De reip. Batav. Antiq.* p. 35. Quod omnes ait Tacitus, non ita intelligendum est quasi singuli, tanquam ad comitia, convenerint, relictis laribus ac focus: id enim in gente magna fieri omnino non poterat. sed omnes dicuntur ipsum concilium, quod ex omni regione, omnique ordine, idonei homines mittebantur. Explicat hoc ipse Tacitus, cum de Semnonibus loquens, stato, ait, tempore in sylvam, auguriis patrum et prisca formidine sacram, omnes ejusdem sanguinis populos legationibus coire. This might be practised (as I have observed in the text) in the ordinary, and stated assemblies; but that these legations or representations were not allowed in extraordinary cases is evident from *Cæsar, Com. Bell. Gall.* l. i. c. 56. where we are told, that Indutio-

marus

representatives, to them.—I say, this might sometimes be done when only ordinary business was expected; but in all momentous cases; where the common good was more immediately concerned, as when a military expedition was to be undertaken, or an invasion was threatened, the whole nation (all within such an age at least) was obliged to be present under the severest penalty. This is evident from many instances, which might be produced both from Caesar and Tacitus<sup>b</sup>.

25. In this general assembly was lodged the sovereign legislative power of the whole nation. To this supreme council belonged the privilege of reforming the public grievances; of correcting, amending, and softening such of the old customs, as time, and other circumstances, had rendered improper

marus being threatened with the Roman army, *armatum concilium indicit. Hoc, more Gallorum, est initium belli, quo, lege communi, omnes puberes armati convenire coguntur; et, qui ex iis novissimus venit, in conspectu multitudinis omnibus cruciatibus affectus necatur.* And that these assemblies, in general, were extremely numerous is farther evident from the words made use of by the Roman authors upon the occasion, such as *multitudo, plebs, turba*, etc. so when the Helvetii, as Caesar informs us, agreed to quit their country, the whole *civitas*, or *totius regionis incolae*, were convened, etc.—It being the especial business and concern of their wives, and slaves, to take care of their domestic affairs, what was there, which could prevent the husbands from always attending the service of the nation with their presence, and advice?

per to be any longer rigorously observed, and of establishing new orders and regulations obligatory to the whole union, or community. When assembled in a national convention, the antient Germans enjoyed all the power and privileges, which were usually exercised by the people in the celebrated governments of Greece, and Rome. For at these solemn meetings war was proclaimed; peace confirmed; migrations settled<sup>a</sup>; the public General chosen, and the princes of the several provinces elected: and to this authority, likewise, all the superior magistrates and officers seem to have been accountable for the due administration of their respective trusts. If they injured or oppressed any man, by complaining to the general council, a speedy redress might be expected. All causes of a public

<sup>a</sup> *Machiavelli Hist. Fiorent.* l. i. p. 1. I popoli, i quali nelle parti settentrionali di là dal Fiume del Reno, et del Danubio habitano, sendo nati in regione generativa et sana, in tante moltitudine molte volte crescono, che parte di loro sono necessitati abbandonare i terreni patrii, et cercare nuovi paesi per habitare. L'ordine, che tengono quando una di quelle provincie si vuol sgravare di habitatori, è di dividerli in tre parti, compartendo in modo ciascuna, che ogni parte sia de' nobili et ignobili, de ricchi et poveri ugualmente ripiena, dipoi, quella parte alla quale la sorte comanda, va à cercare sua fortuna, et le due parti sgravate dal terzo di loro, si rimangono à godere i beni patrii.

public concern, such as treason against the state, were tried and determined here, as were, probably, many other matters of less consequence, if they related to the members of different provinces; or were brought before it by appeal from the sentence of the provincial princes<sup>b</sup>. For (as in the Hebrew, and most other antient states) the dernier resort of justice was lodged in a national meeting of the whole people, “and according to  
 “ the sentence of the law, which they taught,  
 “ and according to the judgment, which  
 “ they gave, all were to do. None were to  
 “ decline from the sentence, which they  
 “ shewed, either to the right hand, or to  
 “ the left<sup>c</sup>.”—In short, every thing of any moment to the national and common interest could be here only transacted, and ultimately determined<sup>d</sup>. Nor were even their  
 young

<sup>b</sup> *Tacit. De mor. German.* Licet apud concilium accusare quoque, et discrimen capitis intendere. [we have, among others, a remarkable instance of this in Orgetorix the Helvetian. see *Caesar, Com. l. i c. 4.*] distinctio poenarum ex delicto: proditores et transfugas arboribus suspendunt—sed et levioribus delictis pro modo poenarum equorum pecorumque numero convicti mulcantur. Eliguntur in iisdem conciliis et principes.

<sup>c</sup> DEUTERON. xxvii. 11, 12.

<sup>d</sup> There are so many instances of the sovereign power of this general assembly of the whole state to be met with in every page, almost, of *Caesar* and *Tacitus*, that it would be needless to go

young men permitted to bear arms for the public, that is, they were not regarded as members of the community, till they had been first openly presented, and admitted to this privilege in a general assembly. To serve in the national armies; to be esteemed worthy to fight for their country, was an honour, which slaves, or mere mechanics, could not expect to arrive at in those early ages. Where the glory of the nation was concerned, and the common liberty was thought to be in danger, none but freemen could be employed; nor were any, who were not themselves sharers in the public property, looked upon as interested enough heartily to defend it. Such were the valiant armies of the Grecian republics, made up entirely of citizens, which so bravely withstood the almost innumerable bands of Persia; such were the antient Roman legions, before the days of Marius, which laid open the way to the conquest of the

about to prove what is so manifest. See however the whole conduct of the Helvetii from their first leaving their country to their being obliged to return to it again. *Com. Bell. Gall.* l. i. see likewise *Tacit. Histor.* l. iv. where you will meet with the history of Civilis the Batavian, in proof of what I have asserted in this section.

• Arma

the world; and such were those hardy, and well-resolved, forces of our northern ancestors, which, at length, made themselves masters of Europe, triumphing over Italian luxury and effeminacy.

26. As experience, however, could not but soon convince them, that such mixed and tumultuary assemblies, as we have been above describing, were very improper for the speedy dispatch of business, or the secret management of the more important affairs of the community—in order to remedy this inconvenience, and to prevent, as much as might be, all rash and precipitate determinations of the multitude, the princes of each district were appointed, as a standing council or senate; or, (more properly perhaps,) as a representative committee of the whole nation—always ready to advise what was to be done upon any sudden emergency, to call the body of the people together, and (as in the Hebrew, Grecian, Roman,

• *Arma sumere non ante cuiquam moris, quam civitas suffec-  
turum probaverit. Tum in ipso concilio vel principum aliquis,  
vel pater, vel propinquus scuto frameaque juvenem ornant. Haec  
apud illos toga—Ante hoc domus pars videntur, mox reipub-  
licae.*

Roman, and Carthaginian states) to prepare the way for the future deliberations of the general assembly. They undertook the necessary embassies to foreign powers<sup>a</sup>; and to them, particularly, did all foreign ambassadors apply for the dispatch of their business. Differences of lesser influence and concern, or matters of a private nature, they were entrusted to determine by their own authority; the greater, that is, all affairs, wherein the whole nation was interested, they were to prepare, in the most proper manner, to be laid before the general assembly, there to receive their final approbation, or rejection<sup>b</sup>. "The senate were  
 " authors of all councils in the state; and  
 " what was by them consulted and agreed,  
 " was proposed to the people, by whom it  
 " was enacted or commanded; because in  
 " them was the power to make it obeyed."

But

<sup>a</sup> So *Caesar, Bell. Gall. l. i. c. 30.* Bello Helvetiorum confecto, totius fere Galliae Legati, principes civitatum, ad Caesarem gratulatum convenerunt.

<sup>b</sup> *Tacit. De Germania.* De minoribus rebus principes consultant, de majoribus omnes. Ita tamen, ut ea quoque, quorum penes plebem arbitrium est, apud principes praetrahuntur. [So I read instead of *pertrahuntur*, as it stands at present in the text this is the *προβελύσθαι* of the Greeks, and the proper business of

But as to any other authority or superiority the senate had it not.

27. For as every native freeman had an undoubted right to be present in all the general assemblies of his nation, so, when he was there, his independency placed him upon a level with the noblest of his brethren. At that time every one seems to have been reduced to that primitive state of equality, wherein nature herself had originally placed them; the voice of the private man was heard with as much attention, and carried as much weight with it in this democracy, as of him who enjoyed any of the public offices, if he was in other respects his equal, either in war or council. It was the multitude, as they are frequently called by the Roman historians, that is, the bulk of the nation, which absolutely decided in all affairs of moment, both civil and religious\*. Even the  
princes

of the antient senates. Colerus, Acidalius, and other commentators, have made the same emendation in my author]—Expetuntur legationibus et muneribus ornantur. *Caesar, Comm. Bell. Gall.* l. vi. 20. Magistratus, quae visa sunt, (with regard to popular reports) occultant; quaeque esse ex usu judicaverunt, multitudini produnt. *De republica, nisi per concilium, loqui non conceditur.* Vid. *ibid.* l. vii. c. 12. et alibi.

\* *Tacit. Germ.* Rex, vel princeps, prout aetas cuique, prout nobilitas,

princes themselves seem not to have had any other influence, than what their personal character and qualifications conferred upon them. They did not so much as preside in the general assemblies, that province belonging entirely to the Druids, (or national priests,) whose especial business it was to preserve order and decency, as far as possible, in these numerous and unwieldy conventions. They commanded silence; they punished the refractory and disobedient; and, as is most probable, last of all pronounced the will, or decree, of the assembly, however made known or signified, whether by holding up of the hands, or by some particular clash of their arms, (which, like the antient Grecians, they ever carried with them) or by any other means<sup>b</sup>.— It will not be improper to observe here, in order to obviate such reflections, as the reader

nobilitas, prout facundia est, audiuntur, auctoritate suadendi magis, quam jubendi potestate. So *Liscus* in his discourse to *Caesar*, *Bell. Gall. Com.* l. i. c. 17. *Esse nonnullos quorum auctoritas apud plebem plurimum valeat, qui privati plus possint, quam ipsi magistratus.* And another of their great men tells us, in the same author; that such was the nature of his command [he was general] *that he had no more power over the multitude, than the multitude had over him.* *Caesar*, l. v.

reader may otherwise be apt to make upon this description of the power of the Druids—that they were of the chief nobility of their country, and descended from some of the most antient families in it, as were the priests of Egypt, the Eupatridæ of Athens, the Flamins of Rome, and, indeed, the public priests of all other states of the antient world<sup>c</sup>. Their birth, therefore, entitled them to a seat, and voice, in the sovereign assemblies of their nation—and as they had been brought up in study and meditation, they were well prepared to be both judges between their brethren in all the nicer cases of property, and counsellors to their princes in all important affairs, wherein the public was concerned—supposed, as they were, by virtue of their sacred office, to enjoy a nearer correspondence with, and to understand the will of the Gods better than other persons,

<sup>b</sup> *Tacit. ut supra.* Silentium per sacerdotes, quibus tum et concendi jus est, imperatur.—Si displicuit sententia, fremitu adspernantur; sin placuit, frameas concutunt. honoratissimum assensus genus est, armis laudare—nihil autem neque publicae neque privatae rei nisi armati agunt. So *Nic. Damascan. De mor. Gent.* Καλτοὶ σιδηροφορῶντες τὰ κατὰ νόμον πράττειν. Vid. *Thucyd.* l. i.

<sup>c</sup> See *Cluver, Germ. antiq.* Part I. p. 204.

• *Caesar.*

sons, this likewise could not but give them a more than ordinary weight and influence with their superstitious countrymen, whose first regard was always paid to the auguries of the established religion. The calm foresight and maturer wisdom of the Druids seem, therefore, to have been thrown in as a proper balance to moderate the more furious starts and sallies of passion in their rash and untutored brethren—and in return for their services to the public, it is most probable, that as they were entirely exempt from all secular incumbrances, so they were wholly maintained at the common charge.

28. In times, however, of imminent danger to the public from a foreign force ; or, indeed, whenever the exigences of the state

\* *Caesar. Comm. Bell. Gall.* l. vi. c. 23. Quum bellum civitas aut illatum defendit, aut infert ; magistratus, qui ei bello praesint, ut vitae necisque habeant potestatem, deliguntur. In pace nullus communis est magistratus. So in the war, which the Belgae undertook against the Romans, mentioned by the same author, (*Bell. Gall. Comm.* l. ii. c. 4.) we learn, that Galba was made their general by the common consent — ad hunc, propter justitiam prudentiamque, summam totius belli omnium voluntate deferri, etc. Such likewise was the case of Cassibelaun in Britain, another Celtic nation — but instances are too frequently met with in Caesar, Tacitus, and Marcellinus, to be here particularly insisted upon — it may not be improper, however, (as it may be thought perhaps more immediately to concern our present enquiry,) to quote the testimony of venerable *Bede* on this occasion, l.

state were thought to demand it, our German ancestors knew how to recede from that native, and original, equality, in which their birth had placed them\*. Sensible as they were, that where secrecy, dispatch, and ready obedience, were necessary, in such instances, to be subject to the command of many masters could not but be extremely prejudicial to the common welfare. Upon all such emergencies, therefore, the whole nation met together in a common council, and appointed a generalissimo, or commander in chief of the united forces of the several provinces, whom all, both princes and common people, were obliged to obey, under the severe penalty of being looked upon, and treated, as traitors to their country,

v. cap. x. Non habent regem iidem antiqui Saxones, sed satrapas plurimos suae genti praepositos, qui, ingruente belli articulo, mittunt aequaliter sortes, et quemcunque fors ostenderit, hunc tempore belli ducem omnes sequuntur, et huic obtemperant: peracto autem bello rursus aequalis potentiae fiunt omnes satrapae. I cannot find the least remains of this custom of choosing a generalissimo by lot, either in Tacitus, Caesar, or any other writer before Bede: 'tis probable, therefore, that this method was introduced amongst the Saxons in later ages, in order to prevent that confusion, which might otherwise arise in the state, from the brigues and cabals of the princes, who would all think themselves equally qualified for this high commission.—Such was the superstition of the people, he, upon whom the lot fell, was thought to be peculiarly designed by heaven.

\* See

country, if they presumed to act otherwise. By this expedient, the several scattered and disjointed forces of the society were all connected into one body, under one head, were all animated with the same soul, and enabled to exert their whole collected strength. —The power of these German stadtholders, or dictators, (to use the words of the learned Calmet in the similar instance of the Hebrew judge) “reached both to affairs of  
 “war and peace. They determined causes,  
 “but had no power to make new laws,  
 “or impose new taxes on the people. They  
 “were protectors of the laws, defenders of  
 “religion, and avengers of crimes; yet still  
 “without shew, without pomp; without  
 “followers; without equipage, unless their  
 “own estates enabled them to have a num-  
 “ber of servants conformable to their dig-  
 “nity. But this could seldom happen.  
 “For the revenues of their office consisted  
 “only in the presents, which were made  
 “them: they had no other settled revenue  
 “but

<sup>b</sup> See *Calmet's Dictionary*, v. JUDGES; but I have transcribed the passage from Lowman's translation, in his book of the civil government of the Hebrews, p. 188.

“but this, nor did they raise any thing  
“from the people”.

29. “Here then was a magistrate\* of  
“great service in uniting the counsels, and  
“forces of the several provinces of the an-  
“tient German states; and, what may de-  
“serve our particular reflection, a magi-  
“strate of such authority, as was sufficient  
“to prevent any ambitious designs of any  
“other magistrates, how great, or power-  
“ful, soever, from taking place, whether  
“of the princes of the provinces, or of the  
“chief of the Druids, whatever you will  
“suppose their power to be. For the chief  
“authority both in affairs of war and peace  
“being lodged (for a time at least) in his  
“hands, all other persons were under obli-  
“gations of obedience to him, and contu-  
“macious disobedience to him was a capital  
“crime by the constitution.” There was  
no room, then, for ambitious views in the no-  
bility under such a government, as this was.  
For the collected forces of the whole nation  
being

\* These are Mr. *Louman's* reflections upon the nature and office of the Hebrew judges, with a very little alteration, p. 188.

being subject to the single command of the general in chief, the public consequently had very little to fear from the jarring and opposite interests of the several princes of the provinces—nor had the stadtholder, if I may so call him, any thing to apprehend from that quarter, unless he attempted to invade the common liberty, and to stretch his power beyond the limits anciently and customarily prefixed to it.—

“ On the other hand, the constitution had  
 “ taken the utmost care, and with all the  
 “ marks of political wisdom, that the public  
 “ general should not have it in his power  
 “ to stretch his authority beyond its legal  
 “ bounds; for his authority was tempered  
 “ by the advice and consent of the senate  
 “ and people; and to this latter he was,  
 “ most undoubtedly, accountable for the  
 “ right use of his power. He had no authority  
 “ to alter or change any laws; nor to  
 “ make any new one, as occasion might offer,  
 “ to strengthen his interest; or to repeal  
 “

\* I call it only the *general plan*, because I am sensible that there were some particular nations in Germany, which, in Tacitus's time at least, lived under an hereditary kingly government; but they were only two, at most, if I remember right; and these,  
 in

“ peal any old law, which might stand in  
 “ his way. The very persons, who had the  
 “ rank of his counsellors, were all com-  
 “ manders of the hosts of his nation ; and  
 “ the whole army consisted of none, but  
 “ the freeholders of his country. There was  
 “ no such thing as a soldiery, either of men  
 “ or officers, who were listet *en solde*, or for  
 “ pay ; nor had the general any thing to  
 “ pay them with, if there had been any to  
 “ be hired.” —He was entrusted, indeed,  
 with the executive power of the govern-  
 ment, during the time, in which he con-  
 tinued to command the national army ;  
 but this power was far from being arbitra-  
 ry, guided, as it was, by the advice of his  
 own retinue or *companions* ; restrained, in  
 many cases, by the counsel of an indepen-  
 dent senate ; awed by the expected appro-  
 bation of the people ; and limited, by the  
 antient laws and customs of his country.

30. Such, then, appears to have been  
 the general plan<sup>a</sup> of the civil government  
 of

in all probability, arose by degrees from encroachments, or other  
 particular accidents, not taken notice of in our present obscure  
 remains of their antient history. But even here, in those states I  
 mean where kings might seem to preside, the generals of the army,

of the antient German nations both in peace and war—and let modern politicians refine, as long as they please, upon the different modes of rule; and ring the changes upon the various systems of politics, it will not easily be in their power, I am well persuaded, (the circumstances of the times considered) to invent one more perfect, than that, which we have been just taking a view of; one, I mean, better adapted to obtain all the true ends of government, namely, the public peace and safety, the defense of private property, and the preservation of the native liberty of individuals, as far as is  
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like the mayors of the palace in the times of the French kings of the first race, were chosen by the people.—So *Tacitus*, *Reges ex nobilitate, duces ex virtute sumunt.* and again, speaking of the kings of the Frisii, he adds, by way of qualification, *in quantum Germani regnantur.*—It may not be improper to observe, farther, that besides the general assembly of each particular state, there were some-times, in extraordinary cases, more universal councils held of all the Germanic, Gallic, or Britannic nations. So *Caesar*, in more places than one of his commentaries, tells us of a *Concilium totius Galliae*, particularly l. vii. *Re in controversiam deducta totius Galliae concilium Bibracte indicitur.* [This council, we have reason to conclude, was first agreed upon amongst the princes of the several independent states] *Eodem conveniunt undique frequentes multitudines* [Every native free-man had the same right to be there, as he had to be present in his own national council; tho', 'tis probable that the more distant states would rather send *legationes*, or deputations, to represent them, than come themselves; these deputies, if I may be allowed to conjecture, were the princes and the commanders of the hun-

dreds

consistent with the original intention of entering into civil society. "This therefore  
 "is that constitution, which (as Sir W. Temple has observed) "has been celebrated  
 "as the truest and justest temper, that  
 "has been ever found out, between domination and liberty; and it seems to be a  
 "strain of what Heraclitus said was the  
 "only skill, or knowledge of any value in  
 "politics, which was the secret of governing all by all<sup>b</sup>."—The antient German governments were undoubtedly founded upon the principles of a natural freedom and equality in all mankind—we need not  
 there-

dreds of each nation] suffragiis res permittitur [as in the common assemblies of each state] ad unum omnes Vercingetorigem probant imperatorem. [So that the business of this universal council was to choose a general, who was to command the combined forces of the whole Gallic nation.] See likewise *Strab. Geogr.* l. iv.—But that these universal councils were not held so often, as the necessity of the times required, especially after their acquaintance with the Roman armies began, may be gathered from what Tacitus has remarked of the British states; a remark, however, which was equally applicable to all other the Celtic nations, namely, dum pugnant singuli, universi vincuntur. The most usual method was for two or three, and sometimes perhaps more, of those states, who thought themselves most exposed to the danger, to enter into an alliance, to join their forces together, to elect a common general, etc. This was the method, which the Britons took to repel J. Caesar; for 'tis evident, that Cassibelaun was appointed General against the Romans, not by the whole British nation, but by such states only, as lay most exposed to the impending danger.

<sup>b</sup> Sir William Temple's *Miscellanies*, Part ii. 255.

therefore amuse ourselves with utopian constitutions, and lay the foundation of our political happiness upon such systems, as, perhaps, never actually existed, but in the imagination of speculative men.—We have here a plain and well-connected scheme of civil government, deduced from a series of historical facts, which cannot be controverted. A plan of government, which demands our especial notice and regard, as we are therein able to trace the outlines of that rational liberty, which is the strong basis, upon which our present excellent constitution stands raised, and supported. Our ancestors were born free, lived under a free government in their first settlements, brought freedom with them into Britain, and handed it down to us inviolate, at the hazard of all that was dear to them, their lives and fortunes. Our present constitution cannot, so truly, be said to have been changed or altered, as improved and matured by time. Where then is that divine, hereditary, and indefeasible right of princes? where, that absolute and uncontrollable power of kings, which men of narrow, contracted, and unnatural principles are wont

to talk so much of ? Our earliest forefathers, whilst they remained upon the continent, knew nothing of it ; the conquerors of Britain never introduced it into this island ; nor do we feel any thing of it — may our piety to God, our love to our country, and loyalty to our prince save and defend our posterity from it !

31. But the serious and candid reader will, I doubt not, excuse me, if I dwell somewhat longer upon so important, and interesting a subject, as the origin of civil government ; and endeavour to shew, how naturally, and, indeed, almost necessarily, the form, which we have just been taking notice of, sprang from, and grew out of the primitive constitution of things. The first mortals very little concerned themselves with deep reflections, or busied their thoughts with abstruse and laborious speculations ; but, as they found their wants encrease, they immediately applied such remedies to them, as nature herself pointed out without much trouble, and research — What, therefore, I assert is this ; that, if the scripture account of the origination of mankind from one man and one woman

be true, then we may reasonably expect to find all the antient forms of government, as far back, as they can be traced with any appearance of probability, just such, or nearly such, as we have seen, in fact, those of the German nations to have formerly been: they could not indeed, upon the supposition of the truth of Mosaic history, easily have been otherwise — May we not therefore properly, and justly argue backwards; that if (after due examination) the most antient systems of political government, every where, appear to have been exactly the same, as they must have been, supposing the truth of the Hebrew history; may we not, I say, in such a case, safely venture to conclude, that this history, abstracting from the other evidences of its veracity, is founded on truth, and, as such, deserves to be believed and revered? and can so remarkable and extraordinary a coincidence; so entire a correspondence, and relation between that history, and the original circumstances of all nations, be otherwise accounted for? can it be accounted for upon a supposition of the eternity of the world; or, indeed, of its greater antiquity,

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ty, than that which the scripture gives it? it cannot possibly be accounted for upon a supposition, that arts and sciences had been growing into perfection from endless ages. Upon the first dawn of antient history, (about six or seven hundred years after the flood) every thing appears, as might be expected, simple and unrefined; such as artless nature must dictate to a people, who seem to have had nothing else in view, but the mere preservation of that independence, in which they were born, and the acquisition of an easy and honourable subsistence.

32. But these points require a more minute examination, explanation, and deduction—Now the first society, according to the Mosaic plan, was confined within the narrow bounds of husband and wife; these limits, however, soon extended themselves, as the number of their children encreased; but the first man would always retain a natural superiority, or a kind of civil government, (if you please to call it by that name) over them all; such a superiority, I mean, as would invest him with authority sufficient to controul any ill design, which they might be capable of forming against

the common good of the family ; and to determine any accidental dispute, which might arise among his several children, who were all equal. For in a species, such as is the human, continually subject to be hurried away by the violence of passion, or to be misled by whim and caprice, even brethren themselves will too frequently stand in need of an arbitrator.—Upon the decease of Adam, of whatever nature the superiority which he had exercised over his children might have been, they would all of them be reduced to an absolute state of equality, or independency, with regard to one another ; tho' to their elder brother, perhaps, as to the more immediate representative of their common parent—as to one, whose years had taught him a larger share of experience and wisdom, they might be willing to pay all due deference and respect, to hearken to his counsel, and advice upon extraordinary occasions, and to submit their few differences to his decision. For nothing, I think, can be more clear, upon the most solid and incontestable principles of reason, than that after the father's death, neither the eldest, nor any other son, (with whatever qualities

lities of mind, or body, he might chance to be endowed) had a right to any more power, or command, over the other brethren, than those others, either by express, or tacit consent, were of themselves willing to confer upon him, and submit to, for the sake of the common good.

33. For, to go to the bottom of the argument, what should put a difference between them, with regard to this most interesting affair of their lives? were they not all, equally, sons of the same father? did they not all enjoy the same common faculty of reason? and had they not all the same being to support, and the same liberty, in which they were born, to maintain? wherein, then, did nature make, or reason point out a difference between them, that one brother should have a right to controul and over-rule the actions of another? could barely coming into the world before the rest confer so important a power? or give one man a right to command the actions of another, superior to him, perhaps, in all respects, except mere priority of birth? it is, indeed, impossible, that an effect of such essential consequence to the well-being, and happiness,  
of

of mankind should flow from so weak, and inadequate a cause — Suppose the elder brother had been born an idiot; or imagine him a man destitute of goodness, wisdom, and courage, which are natural, and real supports of authority, must the rest of the family have obeyed his voice, and been subservient to his will? no one, I think, will be so absurd, as to say they ought: it is evident therefore, that merely being born first is not a cause sufficient to found the origin of civil authority upon. But suppose the elder brother should plead the will, and designation of the father, in maintainance of his claim? all reverence, and regard would, I own, be due to the father of mankind from his posterity — but, I believe, it would be extremely difficult to evince, that even Adam himself had any other civil power over his children, after they were arrived at years of discretion, than such, as they were pleased to confer upon him by their own voluntary consent. But granting he had, surely he could have no natural right to transfer this great power to another at his death? his authority, how large soever it is supposed to be, was purely personal;

sonal; and, as such, must necessarily cease with his life—there was no other common parent of mankind left to whom it might devolve; nor any other person in being, who could plead the high claim of having begot, and educated all his subjects. Had the power of Adam over his children been of the political kind, and arbitrary, he might indeed have made over his empire, as some people affect to call it, to a man of the weakest abilities; he might have constituted the most wicked and hated man ruler over the rest of his brethren—But the supposition is absurd—and we may certainly conclude, that in the primitive ages of the world neither priority of birth, nor the mere will of any particular person was the foundation of civil authority; and consequently, that nothing but the free consent of the governed was able to constitute civil governors.

34. Upon the death of the father, therefore, each brother, with his children, would form a distinct and independent household or family, which, according as generations multiplied, would be again branched out, and subdivided into several other families; and the whole, taken together,

ther, would constitute, what, in the most early ages of the world, was called a tribe. — A tribe then, agreeably to the primitive notion of the word, was a numerous collection of households or families, all descended from the same common stock, and living near to one another<sup>a</sup>; all of them, as to any civil superiority, absolutely free and independent upon the rest; tho' all of them naturally flying for justice and protection, if aggrieved, first to their several fathers or masters, and afterwards to their respective heads or princes<sup>b</sup>, as soon as the growing vices of mankind had made it necessary to appoint a common arbitrator of their internal differences, and a common general of their militia—all of them uniting, as often as the public interest of the whole tribe, or consanguinity,

<sup>a</sup> Such sort of tribes, as I have here described, were not to be found in Judaea only, but in all other nations of the antient world; such, to this day, are the *Hords* of Tartary, the *Septs* of Ireland, the *Clans* of Scotland, etc. vid. *Tacit. Germ.* c. 7.

<sup>b</sup> This prince is styled by *Moses*, in the book of *Numbers*, with great propriety, *the head of the families of the stock of his father*; such an one was Tsur the father of Cosbi; and he is accordingly styled by the sacred historian a prince of Madian, or among the Madianites, chap. xxv. § 8. and again, in another place, a king of the Madianites, chap. xxxi. in like manner as our German heads of tribes, or provinces, were by Roman authors frequently called kings. It is not improbable that the prince,

sanguinity came in question—all of them ready to advise, and willing to assist their brethren of the other neighbouring tribes, whenever the happiness of the whole nation<sup>c</sup> was concerned. Thus was every household a little kingdom, as it were, while the whole kingdom was but as one great family. In process of time, when, on account of their encreasing multitudes, or for other providential reasons, it became necessary for some of this first race of mortals to leave their native soil, every thing would still go on in its usual manner, and the same kind of civil polity would naturally introduce itself in their new habitation. Each family of these voluntary adventurers, who had united in the migration, as they had been accustomed to live in their  
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or head of the tribe, was, at first, the eldest direct descendant of the common father, tho' afterwards, for wise reasons, we find him appointed by election.

<sup>c</sup> A *Nation*, then, according to the primitive meaning of the word, was nothing else but a voluntary combination of a certain number of these tribes, uniting together for their mutual defence; and consulting, in common, what might be most conducive to the general benefit of the whole association. Thus the Jewish nation consisted of twelve such tribes; the Ishmaelitish of the same number; the Suevi of an hundred, and the Helvetii of four, etc.

own country, so would they continue to remain separate, and distinct from the rest of their brethren, under the conduct of their own heads or chiefs; tho' in order to avoid the evils of confusion in command, a temporary general, or supreme judge, might be set over the whole body or association, to take more immediate care of the public interest, and to provide for the common safety, during the hazard of a long and troublesome march, and the danger which always attends a new settlement.

35. But this great affair being finished to their satisfaction, every thing would of course revert into its old channel; their judge, or commander in chief, would lose his extraordinary power, and liberty and independency would flow, as formerly, through the whole colony. The new acquisition would be regularly divided into certain larger districts, or provinces, according to the number of the tribes, which joined together in the expedition; and these districts would be again distributed amongst the several families—so that each man would once more become master of his own household, and each tribe would have

have its own head, or prince to preside over it; we should again meet with particular assemblies, taking care of the common concerns of its particular province or tribe; as well as with more general assemblies, or congregations of the whole people, superior to all other powers in the nation, consulting and advising what was most expedient for the common good of the whole fraternity. — This is no utopian, nor imaginary scheme, but a just, and true picture of nature herself drawn from the life; as will be readily acknowledged by every one, who is, in the least, acquainted with the antient, or indeed the modern history of the world in those states, where the later arts of refinement and policy have not been introduced. “With such nations, “we find in scripture, all the lands of Judaea, and the adjacent territories were “planted of old; with such, the many several provinces of Greece and Italy, when “they began first to appear upon the records of antient story or tradition; and “with such was the main land of Gaul inhabited in the time of Caesar; and Germany, in that of Tacitus. Such were the  
“ many

“ many branches of the old British nation ;  
 “ and the septs among the Irish ; and such  
 “ the infinite variety and numbers of nati-  
 “ ons in Africk and America upon the first  
 “ discoveries, distinguished by their several  
 “ names, and living under their several  
 “ kings or princes, till they came to be  
 “ swallowed up by greater empires<sup>a</sup>.” In  
 this very manner, according to Moses, “ were  
 “ the isles of the Gentiles divided by the  
 “ sons of Japhet in their lands ; every one  
 “ after his tongue, after their families in their  
 “ nations<sup>b</sup>.” — But it is now time to proceed  
 in the view, which I propose to take, of the  
 German, or Anglo-Saxon, form of govern-  
 ment, as it was established in Britain.

## 36. No

<sup>a</sup> *Sir William Temple's Miscell.* Part i. p. 66.—Even the plan of the antient Egyptian government, tho' not usually represented in this light, was certainly not unlike that of the old German nations. The whole country, for instance, was divided into so many separate portions, Pagi, or Nomes, as they were more usually called, and over each of these was a prince appointed, (such an one was Potiphera, prince of On, or Heliopolis.) These princes, besides the jurisdiction which they exercised over their own provinces, were in the nature of a senate to the state ; they were always counsellors of the king, and their sons, together with those of the rest of the young nobility, were his attendants and guard. Their priests and soldiery, that is, all those, who were descendants of the old planters of the country, were equally noble, whilst the plowman and mechanic were regarded by them in the most low and contemptuous light. The king, or Generalissimo, who was here a standing officer of the state, was elected by the nobility,

36. No sooner had the Romans, (about the beginning of the fifth century) under the reign of the emperor Honorius, quitted the sovereignty of Britain, but the deserted inhabitants were immediately attacked by their implacable neighbours in the north, the Scots and Picts, with all the violence, which revenge and a prospect of plunder could inspire—and tho' they withstood the fury of the enemy for some time with great courage and resolution, yet being, at length, quite exhausted, and worn out, as well by their own mutual divisions, as the many battles which they had lost, and the uncertain peace which they had been compelled to purchase, they suffered themselves to be per-

bility, and out of their own body, i. e. by all the native free-men. The *πᾶσις*, both general and particular, so frequently mentioned by Herodotus and other authors, answered to the German provincial and national assemblies, being, like them, of a civil as well as religious nature—and to observe it once for all, such was the Panathenea, or general congregation of the tribes of the Attic state; such the Amphictyonic council, which united the several nations of Greece; and such those other Amphictyonships, as we may call them, mentioned to have been formerly celebrated in Asia Minor, the islands of the Archipelago, Italy, etc.

<sup>b</sup> Here, says Mr. *Mede*, p. 275. we see a twofold order in this division. First, they were ranged according to their nations; and then secondly, every nation was ranked by its families: so that every nation dwelt, and had its lot by itself, and in every nation the families also dwelt, and had their lots by themselves, etc. which is undoubtedly true in fact.

persuaded by their king Vortigern to agree to a proposal, which he made to them, of calling in a foreign force to their assistance. In pursuance of this rash determination, the Saxons were judged the most proper nation to apply to upon this critical occasion. Ambassadors were accordingly dispatched. The Saxon nation was convened. The conditions, upon which the auxiliary troops were to serve, are soon agreed upon; and Hengist and Horfa, sons of one of the principal chieftains of the country, were appointed by common consent to command the forces, whose lot it was to undertake this expedition. What the consequence of the war was, and by what means the Saxons, together with their confederates the Angles and Jutes, made themselves masters of England, is not to the present purpose to enlarge upon; it being proposed only to endeavour to investigate the particular form of government, which they settled in this island, upon their conquest of it—and may we not, with great appearance of probability, conclude, even before we proceed to a more minute examination of the point, merely from what has been already observed of the manners and genius of the people,

ple, that it would bear a near resemblance to that, which they had formerly been accustomed to live under in their native country; as near, at least, as the circumstances of the times, and the different exigences of their affairs, would suffer them to approach to?

37. For who amongst them had either authority, or force sufficient to introduce any essential alteration in so weighty, and important a matter? Not Hengist, nor his brother Horfa, who, it is certain, were appointed only as temporary superiors, or commanders in chief of an army of volunteers; whose power was limited, whose revenues were small, and whose soldiers were all their free-born associates, and their countrymen. Much less can it, with any appearance of reason, be supposed, that the troops themselves which first engaged in the British expedition should agree together to make any change in their antient constitution. For what motives could possibly induce them to enter upon such a measure? Their government had been sanctified to them by the long approbation of their forefathers; they had hitherto lived contentedly under it; nor could they easily intro-

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duce any innovation, which would not be for the worse. An army of free-men, bold, daring, conscious of their own strength, and bred up in a continual exercise of arms, would not, without much difficulty, be brought to submit their necks to unknown impositions, or to suffer the least infringement to be made upon their civil liberty, which the necessity of their affairs did not absolutely require of them. But even granting, either that they, or their generals, had ever so great an inclination to novelties, the perpetual wars, which they were engaged in, from their first entrance into this island to the union of the heptarchy under Egbert, would not afford them either leisure, or opportunity, to put their schemes in execution. The conclusion therefore is certain, that the same fundamental principles of equality, freedom, and independency, which had formerly been the firm basis of their government, whilst they lived upon the  
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\* *Pety's Rights of the Commons*, Pref. p. 6. It cannot be doubted, but that the Saxons, who made themselves masters of the British nation, brought with them their country laws, and government.—*Dr. Brady, in his full Answer* to this book of Mr. Pety's, p. 6. grants, that “ the Saxons brought their country  
“ laws

continent, would become, in like manner, the great strength, and support, of the Anglo-Saxon constitution in England<sup>1</sup>.

38. But that the antient German government was actually established in this island, upon the conquest of it by the Anglo-Saxons, will still more satisfactorily appear by the evidence of history, as we descend to a particular examination of the several members of their polity.—Our first enquiry, therefore, must be, in whom the property of the land was invested, upon its coming into the possession of its new masters—For the determination of this question will, in a great measure, point out to us, where the supreme legislative authority was lodged. For as the maxim is undoubtedly true, that power is founded upon, and always follows property, so will its effects be most visibly perceived in those antient states, where the uncorrupted dictates of nature have not been compelled to give way to the  
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“ laws with them into Britain, (of which, says he, there can  
“ be no doubt) but not their popular government:” tho’ how they could bring the one with them, and not the other, is as difficult to conceive, as ’tis contradictory to all historical evidence.

over-bearing violence of temporary force; or to yield to the more artful refinement of politic ambition.—I shall not, therefore, scruple to assert, that, as formerly in their own country, so in Britain likewise, the property of the land was vested entirely in the people; that is, in the whole collective body of the free-men of the army, (whether Saxons, Angles, or Jutes) who had ventured their lives in the acquisition of it. For let it ever be remembered, nor can it be too often insisted upon in this enquiry, that the Anglo-Saxon troops, which subdued Britain, were voluntary associates and co-partners in the expedition, which they undertook; that each man was in some sort his own master, absolutely free and independent of all the rest, excepting only that occasional obedience, which he had obliged himself to pay to such officers, as either by lot or the decree of a national assembly, had been appointed to command over him. They were not mercenary troops collected from the lowest dregs of the people, bought at a price, fighting for pay, and shedding their blood for the profit of other people, but engaged in their own cause  
and

and pursuing their own interest, where the gain or loss of the expedition must fall equally amongst them all.

39. Now in order to ascertain with the more ease and justice, the vague and indeterminate right of every man to the whole—that part of the conquered country, which it was thought proper to deprive the old inhabitants of, was divided by the generalissimo, with the advice of the princes and other officers, into as many larger parts, or shares, as there were corps of different provinces, or districts, in his army. These shares were again parceled out, and subdivided by the proper chiefs, amongst the several families and individuals, who had put themselves under their command, according to each man's dignity and necessities; that is, according to the degree of honour and esteem, which either his own particular merit, or that of his ancestors had procured him. By this means, each tribe, and family, and household, would still remain, as formerly, distinct, and, in some sort, independent of all the rest; and the whole army would naturally fall into the same system of civil government, which it

had before been accustomed to live under in its native country. The greater shares would constitute Pagi, or Counties; and as the whole army was, probably, subdivided into bands of 1000, 100, and 10 men each, the portions of land assigned to these several corps would regularly constitute so many trythings, hundreds, and tythings, each under its own Ealdorman, elder, or proper officer\*—For as the life of our ancestors was a continued scene of warfare, very small was the difference between their civil and military establishment. To the same persons, who led them on to the conquest of their enemies, was committed, likewise, the care of  
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\* *St. Amand's Essay on the legislative power of England*, p. 12. In fact, the land was parted amongst the individuals; and we read expressly, that Rollo, our William the Conqueror's ancestor, honestly divided Normandy by measure amongst the people he led. Vid. *William Gemeticen's history of the Dukes of Normandy*, (in *Cambden's Collection*) p. 618. See also *Basnage on the first chapter of the customs of Normandy*—Much to this purpose is what *Boulainvilliers* (*Mem. Historiques*, p. 24.) tells us in his remarks upon the conquest of Gaul by the Saliens, or Franks: *J'ai dit, que la partage des terres se fit entre les Franks de la meme maniere, que se faisoit celui du boutin; or on sçait, qu'à l'égard du boutin portable, on en faisoit autant de lots, que de centaines, & une ou deux de plus pour le general, ou chef de l'entreprise, qui avoit produit le profit. Celui-ci outre l'avantage de la quantité, avoit encore celui du choix entre les lots; mais apres qu'il avoit pris sa part, il n'avoit aucun droit sur les autres, qui estoient tirez au*

preserving peace and friendship between them in their dealings with one another; nor did they know any distinction between their judges and their generals—between the camp and the commonwealth. Every man was born a soldier; nor would any one (the priests only excepted) chuse to be exempted from the valuable privilege of fighting for their country, and of acquiring glory and profit in battle. As the whole tribe was originally made up of relations, the same consanguinity, which had induced them to live near to one another in time of peace, would not permit them to engage under different standards in the day of battle: their troops were

sort par les différentes centaines, et la subdivision s'en faisoit pareillement au sort entre les soldats, de-là vient, que les terres partagées entre les Francs prirent le nom de *Sortes Salicæ*, les sorts Saliques—as the conquests made by the Vandals in Africa are called, in Procopius I think, *Sortes Vandalicæ*—I cannot recollect any passage at present, from whence it may be deduced, that the Anglo-Saxons, upon their conquest, divided Britain in this manner by lot—tho' it is not unlikely, that, after the several portions of booty and land were marked out by the proper officers, some such method might be pitched upon, in order to avoid all suspicion of injustice, partiality, etc. Thus Joshua divided the land of Canaan amongst the Israelites by lot; and Bede informs us, that our ancestors made use of this method, to decide between the pretensions of their several princes to the vacant Generalship.

were so many combinations of families, which fought together in the field, nor in the conquered land were they separated.

40. But if war, as has been already observed, was the principal business, and almost sole occupation of our Anglo-Saxon ancestors, before their arrival in this island; and all other employments, besides the continual exercise of arms, (especially agriculture, and the mechanic arts) esteemed by them of an inferior concern, and not worthy their attention; much more strongly would this principle operate in their present situation, surrounded, as they were, on all sides, by an enraged and desperate enemy. But tho' we should suppose them to have had ever so great an inclination to cultivate and improve their lands, yet such were their present circumstances, it was impossible for them to find leisure or opportunity to put their intentions in execution—the deceived and plundered Britons gave them too constant employment, to suffer them to attend to those arts, which even in their own country they had always left to the care of the lowest

\* So *Tacit. de Germ.* c. 25. *Frumerti modum*, etc. as above,

lowest and meanest of the people, to their slaves and freed-men. The share therefore of the conquered territory, which fell to his lot in the general division, every man (from the commander in chief to the lowest free-soldier) again parceled out, at least the most considerable part of it, amongst his slaves and immediate dependents, for a longer, or shorter space of time, as he pleased, to be managed and improved by them; only reserving to himself, for his own support, and in consideration of his superior right, a fixed and determinate proportion of the produce of their labour—or whatever other equivalent he might think proper to impose\*. The land, which was disposed of in this manner, namely, to be held on condition of the yearly payment of a certain quantity of provisions, or for the performance of certain services, was denominated Folcland and Gafol-land, and was always looked upon as belonging to, or as part and parcel of the owner's allodial estate, which was afterwards called Bocland. For tho' these names were of a later origin than the times we are now considering,

sidering, yet the distinction itself was undoubtedly as antient as the Saxon conquest; and, for that reason, deserves to be farther insisted upon and explained.

41. Whatever lands therefore fell to the original conquerors in the first allotments, may, in general, be stiled, or regarded as Bocland, and were possessed by them, free from all manner of service, and incumbrance whatever; excepting only those burthens, which necessarily arose from the three-fold obligation, which every man was indispensably under to the community itself—namely, of serving it in its wars, when called upon by proper authority; of maintaining the public bridges, in order to preserve a communication between the several parts of their territories; and of keeping the fortified towns and castles in good and sufficient repair. Bocland was truly, and properly, allodial<sup>a</sup>; that is, the *all-hood*, or totality of it was in the proprietor, and regularly descended to all the children (according

<sup>a</sup> It is rendered by *Allodium* in the Latin version of Canute's laws, cap. 75. The Glosses, at the end of Lindenbrogius's collection of the laws of the antient Franks, etc. thus explain this word; *Allodium dicitur haereditas, quam vendere vel donare possum*

cording to the common course of nature, and the usage of all antient nations). It was however devisable by will, or might be granted away by sale or deed of gift, in the owner's life-time, without asking the previous consent of the king, or of any other lord. This original estate, or possession, was divided by the proprietor into two parts, properly termed by later writers, the *Inland*, and the *Outland*. The *Inland* was so denominated, because it lay contiguous to, and was most conveniently situated for the service of the dwelling house, or mansion of the proprietor himself; for which reason likewise it was commonly reserved in his own hands, to be cultivated by his bondmen and slaves, (of whom the wars would furnish him with a sufficient number) for the more immediate use, and sustenance, of his family and household. These are the lands, which, in after times, were particularly known, and distinguished by the Norman writers, by the name of the *Demesne*,

possum ut mea propria. Allodiis opponuntur beneficia, seu feuda, emphyteuses, aliaque bona, quorum usum aut usum-fructum quisquam possidet penes alium remanente dominio.

mesne, or Lord's-lands<sup>b</sup>.—The Outland, or Utland, lay removed to a greater distance from the mansion house of the lord or proprietor; and was scattered up and down in different parts of the kingdom, as future conquests, grants, or purchases, added to their possessions. And this likewise, where there was any considerable quantity of it, seems to have been usually separated into two parts, one of which they disposed of, after having divided it into certain portions, amongst their *Companions* or free-servitors, as a reward of their fidelity; the produce of which was to be freely enjoyed by them, at first, for a single year, afterwards for more; then for one, sometimes for two or more lives, and lastly in perpetuity by them and their heirs for ever—whilst the other part was lett, or granted out to persons of an inferior rank or order, to be occupied by them  
for

<sup>b</sup> *Spelman's Glossary*, v. INLAND. Terra dominicalis, pars manerii dominica. Vox Saxonum terram interiorem significans; nam quae colonis et tenentibus concedebatur *Utland* dicta fuit, hoc est, terra exterior, hodie tenementalis.

<sup>c</sup> The quantity of *fearme*, or rent, for every plough-land, seemeth in those days to have been certain in every county, and according to the nature of the place. King Ina, in his Laws, made it so thro' all the territory of the West Saxons. See *Spelman's Remains*, p. 15. and *Gloss.* v. FIRMA—Until the time of  
king

for a certain term of years, or for one or more lives, upon such conditions, as the proprietor might think proper to impose, and the tenant advisable to accept. This latter sort of tenants, or conditional occupiers of land, are distinguished, in the Anglo-Saxon records, by the name of Neats, Gebures, and Ceorls or Churls; and besides doing service to their lords, and owing them every personal mark of dependence and subjection, they were moreover obliged to pay them a certain annual acknowledgment, sometimes in money, tho' most usually in victuals, or such other things as were deemed most necessary for the maintenance of hospitality, and for the support of the dignity of their station. This acknowledgment, or rent, was called a Feorm, or Farm<sup>e</sup>, (a term originally signifying meat or victuals) and in the days of Henry I, with  
regard

king Henry I. the kings used not to receive money of their lands, but victuals, for the necessary provision of their house. And towards the payment of the soldiers wages, and such like charges, money was raised out of the cities and castles, in the which husbandry and tillage was not exercised. But at the length, whenas the king, being in the parts beyond the seas, needed ready money toward the furniture of his wars; and his subjects and farmers complained, that they were grievously troubled by carriage of victuals into sundry parts of the realm, far distant from their  
dwelling-

regard to the royal demesnes, was changed into a sum of money, tho' the word farmers is still retained. This latter division of the Outland was usually known by the name of Folcland, or the Land of the vulgar<sup>d</sup>, as the former was commonly distinguished by the appellation of Beneficiary, or Feodal.

42. As another property of Boc-land we may take notice that it customarily descended to, and was divided equally amongst all the children of the possessor, if he died intestate<sup>e</sup>—I say, customarily; for it does by no means appear to have been a necessary adjunct of it; on the contrary, as the original proprietor had purchased it with the edge of his sword, and at the hazard of his life, he had full liberty to give it away from his family, (in whole, or in part) either by deed, or by his last will; or even of selling it,

dwelling-houses, then the king directed commission to certain discrete persons, which (having regard of the value of those vic-tuals) should reduce them into reasonable sums of money; the levying of which sums they appointed to the sheriff, etc. *Ger-vasius Tilburienfis*, as I find him quoted in *Lambard's Perambu-lation of Kent*, p. 214.

<sup>d</sup> *Spelman's Remains*, p. 12. Folcland was terra vulgi, the land of the vulgar people, who had no estate therein, but held the same under such rents, and services, as were accustomed, and agreed of, at the will only of their lord.

<sup>e</sup> *Tacitus*

it, (if he pleased) as is evident from the name itself of Bocland, which is explained by our learned antiquaries, to signify land held by deed or writing; for it became requisite that a new owner should have some instrument to shew in the support of his right—and it was, in all likelihood, the abuse of this privilege to the ruin of the old families, which introduced the necessity of putting some check or restraint upon it, and drew on the law of entails, made in the reign of king Alfred<sup>b</sup>. For it must be always remembered, as an essential difference between the antient situation of the Anglo-Saxons in Germany, and their later settlement in Britain—that in the former of these countries the property of the land, in the strictest sense, always remained in the community itself, (being every year divided,

<sup>a</sup> *Tacitus mor. Germ. c. 20.* Heredes successoresque sui cuique liberi; et nullum testamentum. Si liberi non sunt, proximus gradus, etc.

<sup>b</sup> Vid. *LL. Alfred. c. 37. ap. Wilkins LL. Anglo-Saxon.* De eo qui terram hæreditariam habet, quam ei parentes sui demiſerunt, ponimus, ne illam extra cognationem suam mittere possit, si scriptum interſit, si testes, quod eorum prohibitio, qui hanc imprimis acquisierint, et ipsorum qui dederint ei, ne hoc possit: et hoc, in regis et episcopi testimonio, recitetur coram parentela sua. Vid. *Hicks Epist. dissert. p. 9.*

divided amongst the individuals) and consequently was unalienable by particular persons. But this establishment could not possibly take place in their new conquests; where the scantiness of their territories, their continued wars with the Britons, and the just dread of that tumult and confusion, which would naturally arise from such frequent alterations in their situation, must necessarily put an entire stop to the annual partitions of their lands.

43. Of those who were possessors of Bocland in their own right, however it came to them, (whether by descent, will, purchase, or donation) and of those only were the magistrates, and all officers both civil and military, originally chosen, whether they were Ealdormen, Graves, or Heretogen—better known by their later names of Governors of counties, of Judges, and of Generals. For as to the Ceorls or husbandmen, and the artisans in general, however useful, or even necessary, their several occupations might be to the public, it is indisputable, I think, that they had no share, at all, in the administration of the common-

\* What *Mutatori*, in his *Ant. q. Itall. medii aevi*. diff. 13. p.

monwealth, in the early ages we are now treating of. Free indeed they were as to their persons, as free as any other members of the community; but this seems to have been the sole privilege, which they were in a capacity of enjoying: for they were obliged to marry within their own order; they were always accounted as the men, or clients, of the great landholders, upon whose territories they lived; their property was liable to be taxed by their patrons upon all extraordinary occasions; nor were they ever admitted as members of the national councils.—But perhaps it may not be thought improper to this place; nor be displeasing to the curious reader, to examine, with more accuracy and precision, who the *Ceorls* above-mentioned were; and how this subordinate distinction arose, at first, amongst a people all naturally equal, and independent of each other. Thus much therefore may certainly be concluded, that they could not be originally descended from the Anglo-Saxons themselves, every one of whom looked upon himself as born noble,  
or

113. has observed of the Langobards and Franks, is equally true  
H 2 of

or be sprung from a nation, in which they were regarded, as little superior to the meanest slaves. For in a country, where the land was every year divided amongst all the individuals, there could not, properly speaking, be any such distinction as rich and poor; seeing every particular person, that is, every native freeman, would be amply provided for by the civil magistrates, according to the reputation, which he bore in the community, or the expence, which he was likely to be at in the coming year—and consequently, there could, scarcely, be such

of our Anglo-Saxons. *Quale discrimen Langobardi, ac veteres Franci, agnoverint inter Nobiles, et Plebem, nondum animadverti; nam appellatio ista longe serius enata est. Quod tamen a vero minime abhorreere mihi videtur, olim quicumque liber nascebatur, nobilitatis etiam particeps quodammodo videtur*—so the Greek Κύριος, Lat. Dominus, Anglo-Saxon Hlaford, Engl. Lord, in the Gothick version of the gospels, is rendered Frauja, or Free—See also *Calvini Lexicon Jurid.* ad vocem INGENUUS. What, therefore, Camillus Peregrinus (quoted by the same *Muratori*, p. 714.) says of the Langobards may with equal justice be applied to the Anglo-Saxons. *Langobardi omnes (says this author) sordidis ab artibus semper abstinuere, dum rebus potiti sunt prosperis, ac primaeva in dignitate permansere: nullusque in tota gente habebatur, qui sublimis et illustris, hoc est, patricius non censeretur.* the same has Boulainvilliers remarked of the antient Franks in his *historical memoirs*. The Langobards and Saxon lived very near together in Germany, and are by *Speelman* (V FELONIA and GOTHIA) very properly called *Consanguineos*. I mention this merely to point out for what reason I so often argue from the customs of one of these nations to those of the other.

When

such a thing heard of amongst them, as voluntary servitude, or of one man of the same people, and nation submitting to labour for, and to do the work of others for hire. And tho' the commission of some grievous crime, or the chance of gaming, or other accidents of a similar nature might occasion the loss of liberty to some of them; yet is there reason to conclude, that such unfortunate persons were never suffered to live at home, but were sold immediately into foreign countries<sup>b</sup>.

44. May it not therefore be asserted,  
with

When therefore we meet with the *Nobiles Angli, totius regni proceres, optimates, magnates*, and such like expressions, as we frequently do, in the acts of the Anglo-Saxon Synods, and Witten-gemots, we are not to understand the *nobiles*, etc. in the sense, which some people pretend, as if none but the nobility, or people of title, were present at them; but rather of the English in general, of the free-born military Anglo-Saxons, who were all *noble*, all *great* men of the kingdom, in comparison of the conquered Britons, and of their slaves and freed-men, who made up the bulk of the nation.

<sup>b</sup> *Tacit. de mor. Germ. c. 24.* Aleam, quod mirere, sobrii inter seria exercent, tanta lucrandi perdendive temeritate, ut cum omnia defecerunt, extremo ac novissimo jactu de libertate ac de corpore contendunt. Victus voluntariam servitutem adit. quamvis junior, quamvis robustior alligari se, ac venire patitur. Ea est in re prava pervicacia: ipsi fidem vocant. Servos conditionis ejus per commercia tradunt, ut se quoque pudore victoriae exolvant — The same reason would hold likewise against their retaining, as slaves at home, such of their unfortunate countrymen, as might be condemned to lose their liberty for their crimes, or

with great appearance of probability, that these Ceorls were originally of foreign extraction, that is, of an extraction different from the rest of the nation, wherein they lived? that they were, at first, mere slaves, either purchased by way of commerce, or taken captives in war<sup>a</sup>; tho' after some time, perhaps, in recompence of their faithful obedience, or for other valuable considerations, manumitted, or set at liberty by their masters. The Ceorls, then, were none other than freed-men and their descendants<sup>b</sup>, together with such of the distressed and plundered natives in conquered countries, as voluntarily submitted themselves to their new masters, to become their slaves and their husbandmen<sup>c</sup>—but as these unhappy

to give up their persons, when they had nothing else left to satisfy the demands of their creditors—however, this latter method of becoming slaves, tho' common enough in other countries, it is probable, was not practised, or so much as known, in Germany; because every free-born native was annually provided for by the state.

<sup>a</sup> *L'Esprit des Loix*, l. 30. c. 11. Lorsque les Francs, les Bourguignons, & les Goths faisoient leurs invasions, ils prenoient l'or, l'argent, les meubles, les vêtemens, les hommes, les femmes, les garçons, dont l'armée pouvoit se charger; le tout se rapportoit en commun, & l'armée le partageoit—La résistance, la révolte, la prise des villes, emportoient avec elles la servitude des habitans, etc.

<sup>b</sup> They

happy persons were not looked upon by the old Germans as members of the community; nor regarded by them, as such, in the annual distribution of their territory<sup>d</sup>, in order to support themselves, and maintain their families, they were obliged by their skill and industry to minister to the necessities, luxury, and superfluities of other people—they were still compelled, in some sort, to continue as servants to, and dependents upon, their former masters; or upon such others of the native freemen, under whose protection they chose to throw themselves. This therefore would be their case in Germany, where slavery, it has been remarked, was extremely gentle—the Ceorls would make  
a very

<sup>b</sup> They were called in the Anglo-Saxon language, *Frilazin*. vid. *Spelman. ad vocem*.

<sup>c</sup> Thus Henry of Huntington, speaking (l. ii.) of the cruelties, which the Saxons used towards the Britons upon the conquest of this country, amongst other things says, *alii fame confecti procedentes manus hostibus dabant, pro accipiendis alimentorum subsidiis aeternum subituri servitium*, etc.

<sup>d</sup> *Tacit. de mor. Germ.* c. 25. *Liberti non multum supra servos sunt, raro aliquod momentum in domo, nunquam in civitate, exceptis duntaxat in iis gentibus, quae regnantur. Ibi enim et super ingenuos, et super nobiles ascendunt; apud caeteros impares liberikini, libertatis argumentum sunt.*

a very considerable body of men, but without any hopes (unless upon some extraordinary emergency) of being ever admitted to the privileges of the native freemen and landholders<sup>c</sup>; superior, it is true, to mere slaves, to the hewers of wood and drawers of water, as they were in a manner their own masters; but as to any other advantages, they do not seem to have had any foundation to expect them. In Britain, indeed, the circumstances of the freed-men would in time admit of great alteration in this respect. For as the property of the land was settled in the individuals, and left, in a great measure at their own disposal; the *Ceorls*, either by the bounty of their lords, or by their own diligence and industry, might, at length, hope to become proprietors of land themselves; and, consequently,

• For tho' their lords, without doubt, might give up their private claim to them, as their slaves; yet none but the public, i. e. the voice of the whole nation, could admit them to the privileges of the native freemen.

<sup>c</sup> As the *Ceorls* (in the light wherein we have considered them) were the only merchants, or tradesmen, in those early ages of our constitution, so were they likewise the only farmers, as we should now stile them. For by them chiefly were occupied the outlands of the king, and the other great landholders. And tho' the lands, which they held, had been first granted them upon cer-  
tain

quently, by that means to enjoy some share in the public administration of affairs—and thus it appears, sometimes at least, to have happened in fact, as may be collected from an old Anglo-Saxon law still extant, wherein it is expressly provided, that “if a Ceorl, “or husbandman, throve so well, that he “had fully five hides of his own land, a “church and a kitchen, a bell-house and a “gate-house, a seat and a several office in “the king’s hall, that then he was from “thenceforth worthy of the rights of a “Thane:” that is, he had the privilege of sitting in the Folc-mote, or general assembly; he had a greater respect and regard paid to his person, and his life, in the customary estimation, was valued at a higher price, being raised from 200 to 1200 shillings<sup>f</sup>.

#### 45. And

tain conditions of rent, personal service, etc. and were generally revocable, at the will of their lords; yet about the time of the conquest, or a little after, when the Beneficiary or Thane-land became hereditary, the Ceorls likewise, (in which number I would here comprehend many of those unfortunate Anglo-Saxons, who had lost their estates in the long wars between them and the Danes) claimed a sort of property in those lands, which had been, for some time perhaps, occupied by them and their families; and their plea seems to have been allowed to be good—Hence, therefore, I would date the original of Soccage-Tenure, the liberties of our antient soc-men, (see Domes-day book) and the privileges of

45. And here, I presume, it will not be deemed foreign to the scope and intention of this essay, to examine particularly into the original of the Anglo-Saxon Thanes, and to enquire from whence the title sprang, and what privileges were annexed to it. The word we see used very early in the chronicle of our ancestors, and consequently it is not unlikely, that it was of the growth of the continent<sup>a</sup>. In its native and primary signification it means a *Doer*, in general, one who ministers to or does for another, a soldier or man of strenuous action; tho' we find it commonly, and more particularly, applied to such as served in some honourable employment about their prince, lord, or any other great personage<sup>b</sup>. Will not therefore this very definition, or description rather, of the office of a Thane point out to

us

of our later copy-holders. See *Spelman* in voce *Socmannus*—Much of the nature of these Ceorls, and our soc-men, were the *Lango-bard Arimanni*. See in proof of this the charters produced by *Muratori*, *Antiq. Ital. med. Aev.* p. 722. et *Spelman.* in voce.

<sup>a</sup> The earliest express mention, which I find made of these Thanes, is in Sax. chronicle, ad ann. 626, and 656. We find it likewise in the Latin version of the *Laws of Wihfred king of Kent* made about the year 700. *Advena seipsum purget juramento in altari, uti Regis Thanus.* They are also spoken of in the *laws of Ina king of Wesssex*, made likewise in the beginning of the eighth Century. Vid. *Wilkins's collection of Anglo-Saxon laws.*

us the genuine source, from whence it was derived? Could the Anglo-Saxon Thanes be any other than the Companions or Ambassadors of Germany, of whom we have already so largely treated? For not to insist upon the genius of our northern conquerors, their uniform perseverance in their old customs, and their extreme aversion to all new ones, we find every mark of resemblance between them, which might be expected to appear in things the most like to each other; and every feature of the robust offspring carries the strongest evidence of the parent, to whom it owed its being.

46. The Anglo-Saxon Thanes, (agreeably to what has been before observed of that faithful band of *companions*, which attended in the families of the provincial princes upon the continent) were usually descended

<sup>b</sup> THAINUS. Vox a verbo Saxonico deducta, quod *alicui ministrare* significat; ei qui servitutem servit e regione contrarius. Is enim a verbo deducitur, quod *servire* significat. *Wilkins's Glossary* in voce. and to the same purpose all the other glossaries. We find them subscribing to the antient charters under the title of *Ministri Regis*; and in the version of our Saxon Annals they are called *Ministri regii*—The distinction between *servitium*, and *servitus* was well known in the Roman law.

<sup>c</sup> See p. 32. et seqq.

descended from the best and noblest families in their country<sup>a</sup>; they were always native freemen, nor might any slave, or, indeed, any person, whose ancestors had ever born the badge of slavery, be admitted of their number, till it was so determined by a particular law, provided on purpose, contrary to antient custom. They made up the retinue, and were constant attendants upon the persons of the generals, governors of shires, and other great men; they bound themselves to promote their patrons interest by an oath of fidelity; they were the principal ornaments of the king's court, and out of their body were all its chief officers commonly taken; they were counselors to their lord in time of peace, and his well-resolved defense, and guard, in the day of battle<sup>b</sup>. Amongst many other distinguishing-

<sup>a</sup> This was likewise the case of the Scots-Thanes, as we are informed by *Lefsy* in his book *De orig. moribus, etc. Scotorum* — his words are, *Nam in ipsis reip. nostrae rudimentis cum aliqua adhuc Barbaries Scotiam occupasset, quosdam duces (Thanos vernacula lingua vocabant) illustri familia ortos delegerunt, quibus se suamque rempublicam regendam committebant* — Bede, speaking (l. 3. cap. 14.) of *Ofwy* king of Northumberland, tells us, that undique ad ejus *ministerium*, de cunctis prope provinciis viri etiam nobilissimi concurrerunt.

<sup>b</sup> Hear one of king *Athelstan's* laws upon this subject — Si quis terrestri vel navali pugna *Dominum*, aut commilitonem suum  
[Fellow

tinguishing and honourable appellations, given to them, they are sometimes stiled *Princes* by the early Latin writers of our history<sup>c</sup>; tho' we generally find them in our laws and annals under the title of the king's soldiers, family, militia, or company. To this purpose is what the learned antiquary Mr. *Lambard* has observed of them in his *Perambulation of Kent*<sup>d</sup>, where, speaking of one Byrthric a very rich man of this province, he tells us, that he was a *Thane*, "which word, says he, signifieth  
 " properly a *Minister*, or *Free-serviteur* to  
 " the king, or to some great personage. But  
 " usually at those times, taken for the very  
 " same that we call now, (of the Latin word  
 " gentilis) a gentleman; that is, a man  
 " well-born, or of a good stock and fami-  
 " ly. Neither doeth it detract any thing  
 " from

[Fellow Thane] per ignaviam et pigritiam deseruerit, vita et rebus omnibus multator, ejusque res omnes, et quem illi prius dederat fundum, dominus recipito.

<sup>c</sup> *Selden's Titles of honour*, part. ii. pag. 640. vol. 5. of his works. But tho' *Princeps* in the singular number was so proper to every of them (the greater Ealdormen) yet the plural, *Principes*, is often applied, comprehensively, to others also of less note, yet special eminency, as *Thanes*; and such more, as were *viri primarii*. The authority our author quotes for this is *Henry Hunting. Gul. Malmsh. and Ingulph.*

<sup>d</sup> P. 498.

them by the free concession of the British princes, or obtained by the edge of the sword, were but scanty, and scarcely sufficient, upon a division, to afford an honourable support to all those, who as voluntary partners in the danger of acquiring, had an equal title to the enjoyment of the accruing profit. All hopes therefore of enlarging their narrow territories, and of providing for an encreasing offspring, who had all a common claim upon what their father was already in possession of, must depend entirely upon such conquests, as they should hereafter be able to make. But as the greater, or lesser share of property, which they might hope to procure from any future expedition, must in some measure depend upon the favour, as well as valour of their patron and commander, hence it must necessarily come to pass, that the *Free Serviteurs* (as Lambard calls them) that is, the *Companions*, dependents and clients of the great men would be considerably augmented.

48. The General in chief, thro' the necessity of their affairs, advanced to the higher title or dignity of king, would, we  
may

may suppose, upon all proper occasions, take more especial care of what might, any ways, concern his own followers and attendants, whose faithful services he had already experienced, and whose interest he might still hope to make useful to himself in any farther views which he should entertain of encreasing his power and authority. As far, therefore, as his particular influence extended, those persons, who had the good fortune to be admitted into the retinue of the king, would of course be recommended by him to all offices, both civil and military. If a new distribution of land, upon some fresh conquest, was to be made — their several merits, the honour of being employed by, and immediately attending upon the person of, the supreme magistrate, would, it may easily be supposed, be first and principally regarded: and where no other opportunity offered itself of sufficiently providing for his friends, and *Companions*, by new acquisitions, he would recompense their fidelity out of that larger proportion of land, which fell to his own share, as Captain General, in the original, or any subsequent

quent allotment. A horse, or suit of armour, or some such merely honorary mark of distinction, had been formerly looked upon as an adequate reward for the greatest services; but in Britain, where their wants were become greater, and the means of satisfying them less in proportion, than they had found them upon the continent, some more solid recompence was expected; something, which might enable them to main-

• As the different Celtic nations seem, antiently, to have had very different names for those persons, whom Tacitus (as we have seen) particularly styles *Comites*; some calling them *Ambasii*, others *Soldurii*, and others (we may suppose) giving them other appellations; so we find likewise as great a difference in the titles, which their successors in the various kingdoms of Europe bestowed upon them in their different conquests: for whilst the Anglo-Saxons called them *Thanes*, their brethren the Franks and Lombards distinguished them by the stile of *Vasses*, *Drudes*, *Leudes*, *Antrustiones*, *Gafindii*, and the Goths in Spain by the appellation of *Gardingi*. For that all these names signified one and the same office, and were originally like the antient German *Comites*, will be evident from a few observations, which I shall take the liberty to throw together upon each of them. The author, whom I shall chiefly follow, is the learned *Muratori*, in his late laborious, and accurate, work of the *Antiquities of Italy of the middle Age*—And first of the *Vasses*. P. 548. *Vassi* nomen, uti Du Cangius, Boxhornius, Eccardus, alique viri docti animadverterunt, non aliunde natum videtur nisi e Cimbrica voce *Gwas*, significante *Famulum*, *Ministrum*. Olim ergo nobiles viri, seu militari cingulo insigniti, non secus ac nostris temporibus, ad regum famulicium inhababant, tum ut patrocinio principis, aliisque aulae regiae privilegiis fruerentur, tum etiam ut regum liberalitatem in se derivarent (quod plerumque accidebat) atque ab iis *beneficia*, hoc est, usum fructum praediorum regalium, dum vita comes esset, consequerentur.

maintain the dignity of that character, which the freedom of their birth, and their continued attendance upon the person of the prince, gave them in the eyes of their countrymen. Hence must it necessarily come to pass, that as the office of King's Thane, or servant, would be much sought after, so by degrees would it grow into a title of especial honour and esteem.

49. The remarks, which I have been  
making

rentur. Quicumque nobilis ad famulicium principis adscisceretur, eidem juramento fidelitatem suam obligabat, atque exinde *Vassus* appellabatur. *Vassalli* vero (si tamen fuit, quod non credo, inter vassos et vassallos, discrimen) ii nuncupati videntur, qui inferioris ordinis erant, et aequae tamen atque vassi regi famulabantur—ac propterea id genus non ignobiles famuli, atque ingenui viri episcopis, comitibus, atque abbatibus inservientes, etsi interdum *Vassi* quoque dicantur, saepius tamen *Vassalorum* nomine donati visuntur. so again, p. 549. Fuerunt ducibus, marchionibus, comitibus, episcopis, et demum abbatibus *Vassalli*, id est, nobiles famuli, *Ministeriales* etiam appellati, qui senioribus hisce (Saxonicæ *Baldormen* dictis) obsequium ac servitium praestabant; sive ad augendum splendorem domesticum, sive ad subeundos pro eis militiae labores. Observe what follows; Ceterum necesse minime fuisse videtur ad *Vassos* constituendos, ut beneficii cuiuspiam praecederet collatio. Interdum in ipso famulicii, seu *Vassatici*, exordio se liberalem *senior* praebebat: interdum post probatam *Vass*-fi diuturnam fidem, praemii loco fundum aliquem largiebatur eis, aut e proprio sive regali patrimonio, aut ex ecclesiarum spoliis, prout iniquitas eorum temporum ferebat. and again, Olim *Vassus* sive vassallus evadebat, quisquis regi aut potentibus *commendare* se poterat: that is, it was not the being put into possession of the benefice, which constituted the Vass, or Thane, but his being accepted of by the Lord, as his *Companion*, or attendant; for as our author adds, and indeed demonstrates out of the

making upon the custom observed by our Anglo-Saxon kings, and other great men of those days, of rewarding their Thanes, or

old charters produced by him, *Vassos* ante creatos esse, quam *beneficium* consequerentur, neque seniores ulla obligatione adauctos fuisse ad ejusmodi *beneficia Vassis* tribuenda—and farther, the same author observes p. 552. Itaque primum, ni fallor, discrimen perspeximus, quod inter veterum Francorum *Vassos* sive *Vassallos*, et eos quos nunc *Vassallos Feudatarios* appellamus, intercedebat. [There was exactly the same difference in every respect, I believe, between the *Thane* before the conquest, and the *Baron* afterwards.] Nunc, atque a multis saeculis, nemo *Vassallus* constituitur nisi ratione *beneficii*, aut *Feudi* collati, olim vero nihil opus fuit *beneficio*, ut quisquam *Vassi* honore donaretur, quum id munus in eo duntaxat situm foret, ut ad famulicium regis aut ducum—adsciceretur. Quod etiam apertius intelligas e verbis monachi Sangallensis, l. 1. c. 22. *de Gest. Carol. magni*, ubi de quodam episcopo ait, hic habuit unum vassallum non ignobilem civium suorum, valde strenuum et industrium : cui tamen ille ne dicam beneficium aliquod, sed ne ullum quidem aliquando blandum sermonem impendit—*Muratori* proceeds, verum nullo adhuc certo teste didici, tunc ob beneficia collata *Vassos seniores* fidelitatem jurasse : quum contra certum mihi sit, ob vassaticum, sive famulatum, seniori praestitum fuisse ejusdem fidelitatis sacramentum—p. 553. *Vassi* conjunguntur cum *Drudibus*, id est *Fidelibus*. Eos etiam *Fideles* appellatos interdum invenias [our old Thanes are frequently to be found under this appellation in the first Latin writers of our history, and in the versions of the Anglo-Saxon Constitutions] uti et saeculis antiquioribus vocabulo *Salicorum*, *Leudes*, hoc est, qui fidem principi obligabant, et subjectionem.—Neque a vassis diversi fuere *Antrustiones* in leg. salica memorati.—Nor were these *Vasses* to be found only in the court of the prince, but they were dispersed, likewise over the whole kingdom, as is evident from charters and laws produced by *Muratori*, p. 556, etc. in like manner the Anglo-Saxon Thanes were distributed in all the provinces of England; for thus begins a charter of Edward the Confessor—Edw. R. salutem dicit Hermannō episcopo, Haroldo comiti et omnibus suis *Agri Dorsetensis ministris*—Nor did the Franks bestow benefices upon their faithful followers for life only; but, sometimes, gave them away

or servants, for their fidelity, out of their own estates, if no better occasion offered to prefer them, are verified by historical facts.

away in perpetual possession to their *Vasses*; nequaquam, says *Muratori*, in beneficiis unis liberalitatem suam erga *Fideles*, et caros suos, obstringebant; sed saepissime pleno jure (proprietary aut allodiali) in illos dona sua transferre consueverunt. and I have now before my eyes a charter of the emperor Lotharius I. to one of his *Vasses*, named Ercombert, granting him certain lands, etc. wherein are these words: nos cuidam fideli nostro, Ercomberto nomine, quandam curtem nostram cum omnibus mancipiis etc. proprietario jure contulimus, hac de nostro in suo suorumque haeredum Dominio libere transtulimus possidendo.—abhinc et deinceps per hanc nostram auctoritatem eandem curtem cum omnibus mancipiis, etc. proprietario jure teneat atque possideat—seu, faciat exinde quicquid voluerit tam ipse quamque haeredes ipsius. This charter bears date A. D. 839. and many such-like grants of Thane-land may be seen also in *Spelman's Remains*. The Italian Emperors of this age sometimes converted the benefices, which they had formerly granted for life, into allodial or proprietary estates. See *Muratori* 579.—But I said, likewise, that the *Comites* of Tacitus were, amongst the Lombards, stiled *Gafindii*—the same *Muratori* must be my voucher for the truth of this assertion, p. 124. Interdum quoque occurrunt in veterum monumentis *Gafindii*, quo nomine aio designatos fuisse *familiares*, sive qui de familia regis, comitum, aliorumque procerum fuere: and then, (after quoting some of the old Langobard laws in maintenance of this opinion) in the subsequent page, he draws this conclusion from what he had before premised: Itaque deserebatur *Gafindii* titulus liberis hominibus, qui sponte regi, aut regni proceribus famulatum in eorum familia praestabant—Neque inter eos locus fuit *servis*, sive mancipiis, quorum erat servire ex debito dominis suis; libertos quidem invenias (as amongst our English Thanes, in the times verging towards the conquest) qui nempe libertate acquisita fruebantur, interdum fuisse *Gafindios* ducum aliorumque magistratuum, uti ex legibus constat—sed et ipsi *Vassi regii*, sive quum in comitiva regis forent, sive ii tantum qui aliquo ministerio in ejus aula fungebantur, appellatione *Gafindii*, uti videtur, deprehenduntur insigniti—which point our author demonstrates from ancient charters—So again, p.

facts. For as the quantity of land, which fell to them upon any new conquest, as Generals, and chief officers of the armies of their country, was more, in proportion, than was sufficient to maintain themselves, and their wives and children honourably; the surplufage was wont to be disposed of by them in the following manner. Their *Outlands*, as has been mentioned already, they

128. *Quam eminentem locum Gafindii regales, five aulae regalis ministri, ea occasione tenuerint* (at a publick meeting before Berengarius I. king of Italy) *nemo non videt, quum praecedant cancellario, judicibus, notario, et capellano regis, cardinalibus Cremonensibus et vassis Landonis episcopi.* This appears from the instrument itself produced by Muratori, who farther adds, *Verborum autem contextus satis indicare videtur, Vassos Domini regis eisdem fuisse, atque Gafindii*: and what puts it out of doubt, I think, that these *Gafindii* were none other than the Anglo-Saxon *Thanes*, under a different denomination, is a remark of the famous Jer. Bignonius, quoted by Muratori, as above, that in quibusdam veteribus formulis pro *Gafindio* appellari *Ministerialem de intus casa*. Non obfisto ego (inquit Muratorius) sed addendum puto, fuisse olim extra principis aulam complures *Gafindios*, five quod illustri hoc titulo ex privilegio uterentur, five quod a rege ministerii alicujus causa per provincias mitterentur: and a little lower he adds, honorifico autem titulo *Gafindios* insignitos fuisse didici ex charta, which he quotes at length—As to the title of *Gardingi*, which was established amongst the Wisigoths in Spain—tho’ the old writers scarcely know what to make of it, yet am I fully persuaded, that they were in reality none other than the same kind of men, we have just been taking notice of, under the very different appellations of Comites, Thanes, Vasses, Antrustiones, and Gafindii. *Spelman. GARDINGUS.* Apud Hispanos dignitatis classis fuit; vel saltem muneris: quam tamen ipsi Hispani hodie non satis explicant. In

they usually divided into two parts ; one of which they lett-out to their Ceorls, or husbandmen, to be occupied by them at a determinate rent, and with certain inferior services annexed to it ; the other they parceled out into a certain number of portions, (more or fewer, according to the bulk of their estate) called *Benefices*, which they regularly distributed amongst their hono-

LL. Wisigothorum ejus saepe mentio. l. 9. tit. 2. c. 8. *Dux aut Comes, Thyuphadus aut Vicarius, Gardingus vel quaelibet persona.* ibid. l. 9. *si majoris loci persona Dux, Comes, sive etiam Gardingus.* et in concil. Toletan. 13. c. 2. *De accusatis Sacerdotibus, seu etiam optimatibus Palatii et Gardingis,* etc. To the like purpose *Du-Fresne in Gloss.*—They seem to have been the same, as the *Ricoshomes* of later times : for as *Geddes, in his view of a Spanish Cortes,* observes (*Miscell.* vol. I. p. 328.) this was the common title of the *Barons* of Spain—The word is derived from *Gard*, which in the Gothick language of the *Silver Code*, signifies, a house : *Gardingi* therefore are the same as domesticks ; —*Ricoshomes* means viri potentes, rather than viri divites—for *Reik* may always be interpreted *Power* in the Gothick version of the gospels—But, I think, 'tis very evident from what has been observed both in this note and in the text, that all these different titles of the honorary servants of the kings and other great men of those times, were succeeded by the *Barons*, who make so great a noise in the history of Europe from the eleventh to the fifteenth century. *L'Esprit des Loix*. l. 30. ch. 16. J'ai parlé de ces volontaires, qui chez les Germains suivoient les princes dans leur enterprises. Le même usage se conserva après la conquête Tacite les designe par le nom de Compagnons ; la loi Salique par celui d'hommes qui sont sous la foi du roi (qui sont in truste regis) les formules de Marculf, par celui d'Antrustions du roi ; nos premiers historiens par celui de Leudes, de Fideles ; et les suivans par celui de Vassaux et Seigneurs.

honorary servants or Thanes, to be enjoyed by them, in succession, as they became vacant\*. These Benefices were stiled in the Anglo-Saxon language Feos, or Feohs—meaning hereby estates, where the fee or produce of the land was in one man, whilst the property continued in another: and are consequently opposed to allodial estates, or Bocland, where the totality or *all-hood* was vested in the possessor. The land which the patron destined to this purpose was usually stiled Thaneland, from the custom, we may suppose, of being divided amongst the Thanes of the proprietor; and in *Domesday book*, with respect to the king, we find it comprehended in part under the title of *Terra tainorum regis*. The possession of these benefices was originally precarious, and depended entirely upon the will of the donor, who might deprive his Thane of them, when he pleased. They were afterwards bestowed

\* *Spelman's Remains*, p. 12. This Outland they subdivided into two parts; whereof one part they disposed amongst such as attended on their persons, either in war or peace (called Theodens, or lesser Thanes) after the manner of Knight's-fees; but much differing from them of our time, as by that which followeth shall appear. The other part they allotted to their husbandmen, etc.

bestowed for one or more years certain—sometimes they were given for life or lives, and, with the permission or express license of the patron, might be demised by will, or transferred by donation<sup>b</sup>. They were bestowed upon the Thane absolutely free from all service, or incumbrance, whatever; being looked upon and regarded by them rather as rewards for past fidelity, than conferred under the obligation of future obedience. The Lay-Thane seems to have been under no other tye, or obligation, to his lord for collating him to the benefice, than the Maf-Thaner, or ecclesiastical incumbent was to his patron—gratitude, indeed, would induce both of them to be ever ready and willing, to promote the interest of their benefactor, and his family—but this was the whole, which was expected from them. The Anglo-Saxon Thaneland, very different, in almost all respects, from that, which,

<sup>b</sup> Of which see many instances produced from old charters, by the very learned antiquarian Sir *H. Spelman*, in the ninth chap. of his *Remains*; and, not to multiply notes, all that I offer in this section may be proved from authorities adduced in that work, and from the corresponding practice of other northern nations, the Franks, Lombards, etc. as is evident from the testimonies produced in the long note of the preceding section.

which, in after-ages, was held by military Tenure or Knight's-service, seems to have had no more relation to war, than it had to peace ; and as it was sometimes held by women, even in the first instance, and given to the church, without any previous conditions annexed ; so likewise upon the death or amotion of any incumbent, to use the expression, it ordinarily reverted to the lord or patron : whereas, it was of the essence of land held by, what was properly called, Feudal Tenure, to be hereditary. The Thane, indeed, regularly took an oath of obedience and fidelity to his lord, upon his first being admitted into his service or family ; but it does by no means appear from any remains of our Anglo-Saxon history,

\* Sir Henry Spelman's definition of a *Feud* is, "a right which the vassal hath in land, or some immovable thing of his lord's, to use the same, and take the profits thereof *hereditarily*; rendering unto his lord such feudal duties and services, as belong to military tenure : the meer propriety of the soil always remaining in the lord." *Rem.* p. 2. And with this definition Cujacius, and all the other Feudists, I think, agree. Having thus given the legal notion of a *fee*, I shall now describe, from other authors, what is more particularly meant by a *Benefice*. *Muratori* p. 554. *prima notio veterum beneficiorum* haec fuit, videlicet, jus in acquirentem translatum perfruendi praedio tradito, dum vita comes esset : and this our author demonstrates from the best authorities in these cases, antient charters. he goes on, atque haec ipsa notio in beneficiis ecclesiasticis clero collatis perdurat etc.

history, which I have been able to see, that he was obliged to renew this oath, upon being collated to his benefice; it was the patron's accepting the voluntary offer of his service, and permitting him to enter into the number of his retinue or attendants, which constituted him his Thane, and not merely being put in possession of the benefice. For it is not to be doubted, but our antient kings, as well as the other great landholders of those times, had many Thanes, who were never provided for by them in the manner abovementioned<sup>d</sup>.

50. Let it not be imagined, therefore, that the king's Thanes were originally so denominated, because they held their lands of, and from, the king, as their supreme lord,

That these *benefices* were not held by military tenure in Italy, our author evinces by shewing, that even women might, and actually did sometimes, possess them—after these, and some other observations to the same purpose, he justly concludes, p. 555. Quae pauca innui ejus mihi videntur roboris, ut continuo antiquorum *Beneficia* tam facile accipienda non sint pro iisdem ex omni parte *Feudis*, quae posterior aetas usurpavit; neque *Vassiet* *Vassalli* ante annum a Christo nato millesimum, iisdem judicandi plane sunt, atque *Vassalli* subsequenti aevi—See likewise *Spelman's Remains*, p. 5 & 9.

<sup>d</sup> Les Antruffions, (*L'Esprit des Loix*, l. 30. c. 25.) ou Fideles n'étoient pas tels parce qu'ils avoient un Fief, mais on leur donnoit un Fief parce qu'ils étoient Antruffions, ou Fideles.

• *Muratori*

lord, upon condition of certain services, either arbitrary, or fixed, to be hereafter performed by them.—They were free-men like the rest of their brethren; they were, some of them, of the noblest extraction in the nation; their attendance about the person of the prince was entirely voluntary, and regarded by them as a matter of honour and interest—as a mark worthy their highest ambition to fly at; the lands, which they enjoyed in consequence of their patrons bounty, were as free from all kind of service, or incumbrance whatever, as any other land in the kingdom—for it was not till the time of the conquest, that our English *Benefices*, or Thane-land, began to be clogged with (what

\* *Muratori antiq. Ital. med. ævi*, diss. 10. p. 547. E Germaniæ populis *Feudorum* originem arcesso; non tantam tamen antiquitatem Germaniæ Feudorum institutioni tribuens, quantam nonnulli sibi persuasere. scilicet, sunt qui e Langobardis, (Germaniæ populis) Feudorum usum derivant, quibus assentiri nequeas; quum neque in Langobardorum regum legibus, neque in vetustis gentis illius monumentis quidquam occurrat, unde eluceat; apud eos populos Feuda in usu fuisse—Neque mihi satis persuasum est Feudorum indolem, qualem nunc habemus, reperiri apud veteres *Francos*: quanquam non negem eos posuisse fundamenta ejusdem institutionis. *Id. Diff.* 11. p. 592. Mihi, sæculo tantum vulgaris æræ xi. chartæ occurrere incipiunt, in quibus

(what in the Feudal Language was, after that period, called) military service, Homage, Wardship, Marriage, Reliefs, and Aid. This alteration in the conditional manner of conferring, and holding Benefices, we owe, as we do many other innovations in the antient constitution, to our Norman masters, who brought the idea of it with them into this country from the continent, where it had, for some time, been almost universally received. For it was not till about the latter end of the tenth century (a time remarkable for the continual wars, and confusions, in which almost every nation in Europe was engaged) that hereditary feuds were so much as heard of<sup>a</sup>. Before this period upon the de-  
cease

quibus expressum *Feudi* nomen legitur: et si quidam scriptores beneficii vocabulo utuntur, per illud non significant, quod nunc *Feudum* appellamus—I believe, it is not impossible to point out the very year, when, amongst us, not only Thaneland, but Bocland in general, was turned into *Knight's fees*, or *military Tenures*. The *Saxon Chronicle* gave me the first hint: for speaking of a general assembly of the whole English nation summoned by the Conqueror to meet in the year 1085, it has these words (as they are translated into Latin) *Ubi ei obviam venerunt ejus proceres, et omnes prædia tenentes, quotquot essent notæ melioris per totam Angliam, hujus viri servi fuerunt, omnesque se illi subdidere, ejusque facti sunt Vassalli, ac ei fidelitatis juramentum præstiterunt,*

cease of the Vass, or Thane, his Benefice, (or Fee) regularly reverted to the original proprietor, (whether King, Ealdorman, Bishop, or Abbot) who had granted it; as the direct, or mere propriety had all along continued in him, tho' the usu-fructuary right had been given to another for a season.

51. But these things were beginning to put on a very different aspect about the beginning of the eleventh century; the lords of provinces, cities, towns or castles  
(for

runt, se contra alios quoscunque illi fidos futuros—This same general assembly, or Folcmote, as probably it was, is taken notice of by all other our old historians, who tell us moreover, that there came to it homines totius Angliae cujuscunque feodi vel tenementi essent, as some of the best of them express it—so that at this time, 'tis probable, the same kind of tenure was every where established, and both English as well as Normans, by making their fees perpetual, bound themselves by new oaths to their imperious master. The custom of changing allodial estates into feodal, and holding them either of the king, or of some other lord, had been long practised in France; and was the occasion of the second great revolution in that monarchy — See *L'esprit des Loix*, l. 30, 31.—and *Wright's Introduction to the law of tenures*, p. 52. I do not say but there may be instances produced of sons succeeding their fathers in the greater Benefices (whether the government of counties, or any other) before the eleventh century, both in England, and upon the continent, particularly in France, but this was either by a special grant to the son, on account of his own or his father's merit; or by connivance; or by force; there was as yet (this is what I especially contend for) no agreement, no pact; nor was the custom at all practised or known in the less considerable fees, as it was soon after. I shall beg leave to trouble the reader with one quotation more upon this subject taken from Sir H. Spelman's *Glossary* (V. COMES) Erant denique sub

(for the profits accruing from these governments were always regarded as Benefices, equally with the possession of land) every day encreased in strength, and consequently grew more and more independent of their patrons; so that they were become rivals, as it were, to the princes themselves, by whose favour their honours and estates had been first conferred upon them. Upon the father's decease, the son taking advantage of the confusion of the times,  
of

sub his seculis Comites (that is, the governors of cities, castles, provinces, etc.) Comitatus iusticiarii—nec perpetui tunc quidem magistratus, sed vel ad certum tempus, vel ad placitum regis locum possidentes. He then proceeds to shew from express instances, that thus it was upon the continent, amongst the Franks, the Langobards, etc. and afterwards he adds, *nec aliter inter Saxones nostros, ut liqueat ex Asserio Menevensi, ubi Comites perpetram judicantes sic alloquitur rex Aluredus: Quapropter aut terrenarum potestatum ministeria, quae habetis, illico dimittatis, aut sapientiae studiis etc. Bene autem se in officio continentes, rarius tandem ejiciuntur; et inferioribus seculis in patrum avitumque munus succedunt saepe filii, sed indulgente hoc gratia principis, non jure: nam et alias aliis substituuntur*—As appears by instances of such promotions produced by him in Edward the Confessor's time, one of them as late as the year 1053.—Feudales apud Germanos coeperunt fieri comitiva, et illustria, munera sub Othonibus, hoc est, sub fine decimi seculi: apud Gallos vero sub excessu Merovinae stirpis. Torpente enim jam splendore regio potentiores quidam haec invadebant haereditarie—Demum Hugo Capetus cum adeptum noviter regnum novis beneficiis stabilire satageret, ducatus, et comitatus, maximaque regni officia in Feudo retinenda magnatibus permisit, homagio ab iisdem suscepto. Quo edoctus exemplo Gulielmus primus etc.

of his own power and the force of his subordinate vassals, of his lord's distress, or weakness, or distance from him, or want of money, or of any other proper circumstance, made difficulties about resigning his father's Benefice, contrary to the intent of the original grant. What was left for the prince, or patron, to do in this case, surrounded as he was on all sides : his foreign enemies, perhaps, threatening him on the one hand, and his own vassals refusing to lend him their assistance, on the other ? must he weakly yield up his right, and connive at the injustice offered to him ? so would it frequently happen to some ; whilst others, with more policy and better management, would endeavour to convert the power, as well as disobedience of the vassal, to their own advantage, by entering into a sort of treaty or convention with him. The son therefore was permitted to enjoy his father's benefice, which for the future was rendered hereditary in the family—upon condition however that every new possessor should, in his own person, renew the oath of fidelity to the prince or his successor ; should always acknowledge him

as his superior lord; should oblige himself to defend his person and estate against all injurious invaders; should aid him with his wealth upon extraordinary occasions, and should, moreover, assist him in person, properly armed and accompanied with such a number of soldiers, as should be agreed upon between them, (according to the extent of the Fee, which he was in possession of) in all his just wars, especially such as were defensive. These, and such like conditions, sometimes more and sometimes fewer, according to their different circumstances at the time of constituting the Fee, would the lord impose, and Thane or Vassal accept of. Both sides, therefore, would be pleased to think, they had found their account in the new stipulation, or bargain. The Vassal would enjoy, without farther molestation, what he chiefly aimed at, the land and title of his ancestors; and as to the extraordinary fealty and allegiance, which he had bound himself and his family to yield to his patron hereafter, this was only giving himself more opportunities of shewing his courage, of encreasing his estate, and of serving himself by serving his

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lord.

lord. War was the great occupation of the times ; nor was it esteemed, in those days, as any hardship or grievance, to be always ready and prepared to fight for their country, themselves, and their benefactors : the same acts of duty or obedience, which they rendered to their lords, would in return (they knew) be repayed to them by their own Thanes and Vassies ; by those, to whom they, likewise, had granted the Benefices, which were in their power or gift.

52. Nor would the prince himself, upon mature deliberation, find much occasion to be discontented with what he had been, in a manner, compelled to do ; for tho' he had by this means divested himself of the right of patronage over a considerable part of his estate ; and had thereby deprived himself of the opportunity of so amply, and so frequently providing for his future friends and dependants ; yet had he, in recompence for what he had done, a regular and well disciplined body of militia at his command, always ready both to protect him from the injuries of other people, to extend his territories, and to assist him in any other interesting projects, which he  
might

might form. Thus by degrees was a new scene opened in Europe; and what, at first, seems to have commenced from mere force and necessity, was afterwards deliberately continued and propagated from choice. The Vassals and Thanes would seize every opportunity of making their fees hereditary—and, as the tenure of the sword was reputed the most honourable way of possessing land, and to add a sort of nobility to the owner, even such as had allodial estates would be desirous of surrendering them to some great lord, in order to hold them hereafter from him by military service—nor would the patron take exceptions to this manner of extending fees, as it would bind his tenants to a more close and strict obedience to him; as it would render those, whom he had been accustomed to look upon as little inferior to himself, in a greater degree his clients and dependants. In new conquests, especially, this kind of Tenure would be founded; as it would more effectually unite the conquerors together under their common head, and oblige them always to keep themselves armed against any sudden rising, or attack of the subdued natives.—

Such, I am persuaded, was the origin of hereditary feuds in the Western parts of Europe; the different conditions imposed and exacted by different lords, and submitted to by their Vassés, in the several kingdoms of it, constituting what was called the feudal law, which soon took place of, and in a great measure swallowed up those antient customs, by which these nations had, hitherto, been wont to regulate their civil and political conduct.—One thing more give me leave to observe before I quit this subject, that as, before the date of these hereditary feuds, the Thanes and Vassés, were most undoubtedly freemen, and reputed as such, both in their own and in the general opinion of their country, so they continued afterwards—unless it can be supposed, that with a new accession to their former

▪ The service of the sword, and personal attendance both upon ordinary and extraordinary occasions, was the only thing, originally, intended by the lord, and required from the Thane, Vass, or Baron, upon the first constitution of these hereditary benefices, or fees. This indeed was of the essence of them, and never to be dispensed with, but when the war undertaken was apparently unreasonable—But, I believe, it will be neither disagreeable, nor unuseful to a reader of our old history, to see by what steps and gradations, all the other services and burthens concomitant upon this tenure, grew as it were out of this single one; and what a wide door was soon opened for servile dependance on the one hand, and for tyranny

former wealth and power, they, at the same time, resigned their title to their liberty; and, for the mere name of princes, willingly became actual slaves. Ambitious kings, indeed, might, and really did, take occasion from hence, to endeavour to advance an authority, which was formerly limited, into absolute despotism; and to look upon those persons, who had thus strongly engaged themselves to them, as little different in effect from their bond-slaves; but it is as true, that the Vassals never acknowledged this dominion of their lords, but always resolutely stood up in defense of their original independance; and ever regarded the duty, which they owed to themselves and to their posterity, superior to all other obligations whatever<sup>1</sup>.

### 53. Such

ny and oppression to enter on the other. 1. In the first place, to perform homage, and to swear fidelity to the patron could not reasonably be denied—as this was no more than a proper bond or security, that the Baron would duly perform the service, which was required of him, in return for the favours, which had been conferred upon him—Such oaths of fidelity had always been demanded and taken, when the Thane was first admitted into the family of his lord; nor could there be any solid objection offered against its being renewed upon the actual collation to a Benefice. 2. Upon the death of the Feudatary—if he had a son, who was of proper age to succeed him, and capable of perform-

53. Such then were the King's Thanes amongst the Anglo-Saxons; they were the bravest and most noble of their youth, who had been admitted into the king's service, constantly to attend in his court, as his guard and counsellors; they were his friends and faithful companions, both in peace and war, fighting always under his standard; and accord-

ing the service appendant to the lands and honours, which he was about to enjoy, surely it was highly reasonable and expedient, that he, likewise, should oblige his conscience to be faithful to his benefactor; nor could he surely think it hard and unjust, if his lord should demand, and insist upon being paid, some sort of acknowledgment in money, a proper Fine or *Relief*, before he once more parted with his right, as it were, and granted him the investiture, which was expected from him. 3. Were all the children under age upon the death of the Feudatary? who was so fit to have the management of the fee, to receive and to dispose of the rents, profits and emoluments of it, as he who still remained the superiour lord of the soil, and who, during the minority of the heir, was deprived of his military service and attendance? was there any person so proper to have the care and *Wardship* of the children, as well as estate, and to see them suitably educated, as he who had so great an interest in their valour, honour, and integrity? 4. Upon the same account, likewise, if the next heir to the fee was a female, was it not the duty of the lord, to see that she was well disposed of in *Marriage* to a man, who should be both able, and willing, to perform the military service which was required of him, and which was due from the fee? if a male, how could he excuse himself to his dependant, from not advising, assisting and persuading him in the proper choice of a Wife? 5. Was the lord in any signal distress, taken captive in war, or obnoxious to his creditors? was he to match his eldest daughter into some noble house? to make the future hopes of his family (his eldest son) a knight, that is, to manumit him, as it were, out of his own power, and to make him

according to their several merits, were advanced by their royal master to all the honourable offices about his person, to his vacant benefices, to the government of counties, towns and castles, or to any other employment, as far as the power, and interest, of their lord extended.—But who were the middle, and inferior Thanes? For  
we,

him a free and independent member of the community? to enter him into the service of his country, and establish him a new family? or to be at any other extraordinary expence? to whom should he apply for pecuniary *Aid* and assistance, but to those, who had sworn to serve him on all occasions, wherein their help was really wanted; to his own beneficiaries; to those, who had so great obligations to him, and his family, and were therefore bound, as it were, in honour as well as duty, to support it in all its grandeur? 6. Was the Feudatary opulent, lazy, or otherwise engaged? or did his function render it improper for him to serve his lord personally in his wars? nothing could be more just, than that he should either find proper persons to perform the necessary service in his stead, or at least, to pay an equitable *Scutage*, or commutation in money. 7. Finally, if the Feudatary became rebellious to his lord; and, without sufficient reason, refused to comply with the conditions, upon which his fee was at first granted him; if he had defiled the purer course of his blood, by being found guilty of treason to his country; or, lastly, if his family became extinct, what law could be more equitable, than that the fee should *Escheat*, or revert to the original donor, or his descendants? These seven were the most usual attendants, or concomitants, of military tenure; and how excessively they were abused, even in the early ages of their institution, appears as well from the charters of Henry I. and King John, as from the magna charta of Henry III. For all these charters contain in them little else, besides explanations, and relaxations, of the several feudal claims.

we, sometimes, meet with a second, and third order of them in our antient records. — It is extremely difficult, or rather impossible, from the few and imperfect monuments of those times, which are now extant, to settle the precise boundaries of each of these distinct titles; nor, indeed, if it were possible, would it, perhaps, be of any great moment to us, in our general design of delineating the Anglo-Saxon government—it is not however improbable, that the second order of Thanēs consisted of such of the native freemen, as either actually were, or at least formerly had been, attendants about the persons, or employed in the courts of the Bishops, Abbots, and, especially, of the greater Ealdormen, or Governors of the counties\*. For as this important office, in its original institution, seems to have been much of the same nature with that of those German

princes

\* *Muratori*, p. 131. Quum duces et comites, iis seculis, illustre fuit munus, et speciem quandam principatus in regendis populis gererent, erant iis propterea multiplices *ministri*, quales et cura splendidae familiae, et regimen populorum exigere videbantur. After which our author farther evinces from charters, that the *Juniores ducum, et comitum*, mentioned in the Langobard laws, were none other than eorum *Ministeriales*, sc. qui in aliquo

princes mentioned both by Tacitus and Caesar, there cannot, I think, be any question made, but that these great men were surrounded with a free retinue, and had their attendants and *Companions* in England, as well as formerly in their own country, especially if they were men of valour and reputation, tho' perhaps the number of them might be fewer. For as the power of the Generalissimo, in times of continual war and confusion, must go on still encreasing, that of the other chief officers of the community must, in proportion, be diminished, and consequently the number of their noble and free attendants be much short of what it formerly used to be; and even those, who still adhered to their fortunes, would be of so much less weight and consequence, as the opportunities of rewarding their fidelity would be very inconsiderable, in comparison with what it must have been upon an expedition

quo ministerio ducibus et comitibus inservirent. — In the treaty of peace between Alfred and Guthrun the Dane, we have express mention made of other people's Thanes besides the king's. See *Wilkins LL. Anglo-Saxon.* p. 47. Si quis *Regis ministrum* homicidii incuset, etc. Si quis autem *Ministrum* incuset, qui *imperii cognationis sit quam regis minister*, etc.

‡ That

pedition into a new country.—As to the third and lowest order of Thanes, this, it is not unlikely, consisted of those honorary servants, who attended upon the persons of the king's Thanes<sup>b</sup>, and those of the other great men, and considerable officers of the state; for that such attendants there were, is as certain, as that the superior Thanes were oftentimes men of great power and property, and invested with large estates of their own, sufficient to reward the service and fidelity of those, who were admitted into their family and dependance.—But perhaps, after all, the middle and inferior orders of Thanes might be no other than a second, and third class of the king's Thanes, or attendants. For as there were, undoubtedly, different ranks or degrees of the antient Celtic Ambaets, or *Companions*, according to the regulations of the great man, whom they served; so may it, probably

<sup>b</sup> That there were in fact such Thanes of Thanes, or subordinate Thanes, is evident from a law still extant among the *Judicia civitatis Lundoniae*; tho' the last learned Editor of the Anglo-Saxon laws, with good reason, thinks it ought rather to be referred to Athelstan: See p. 71. of *Wilkins* Ed. Attamen si *Thanus* sit, qui serviat regi, et iter equestre ipse faciat in provinciam illius; si tum *Thanum habeat qui eum sequitur*, qui ad regis egressum quinque hydas habeat, et in regis aula domino suo serviat, et

bably enough, be presumed, that the same, or some such-like distinction, would take place amongst the Anglo-Saxon Thanes, who succeeded in their room.

54. Having thus settled these leading preliminaries, we have now room to look about us, and to proceed with more clearness in the nearer view, which we propose to take, of the several parts or members, which constituted the Anglo-Saxon government in England. — In the first place then, as the internal tranquillity, and happiness, of every community must, in a great measure, depend upon the honest and quiet behaviour of individuals one towards another, it seems to have been the principal attention of our German ancestors, that justice, the essential band of social union, should be every where impartially administered; that breaches of the peace should be properly and quickly punished, or made up; a spirit  
of

et ter cum epistola ejus proficiscatur ad regem, ille in posterum, cum praejuramento suo, domini vicario munere fungi debet circa varias necessitates, et causam ejus juste vindicare ubicunque debebat. According to King Ina's constitutions, a man with five hydes of land was ranked with the 600 shilling men, that is, with the persons, whose lives were valued at that rate—that is, with the Thanes,

of mutual revenge checked and restrained, and that all differences, which arose between their several members, from the highest to the lowest, should be terminated as expeditiously, and as equitably as possible—that having no uneasiness, nor grievance to apprehend, or complain of, with regard to their own domestic administration, they might have so much the more leisure to attend to the public interest, and be animated with fresh courage, and resolution, to withstand the attacks of such foreign enemies, as might be inclined to invade them. Scarcely was the love of liberty a more sure, and distinguishing characteristic of our brave northern conquerors, than was their zeal for the impartial execution of justice in their commerce with one another. For as tyranny and injustice, on the one hand, are companions almost inseparable; so are justice and civil liberty always found together, mutually strengthening and supporting each other — For this purpose, therefore, every free-born Anglo-Saxon; every proprietor of land amongst them, whether of Bocland or Thaneland, presided as a sort of sovereign in his own estate; distributing

tributing justice to his slaves, his tenants, and to all such, in general, as dwelt, or resided upon his territories. For the very possession of land, (whether acquired by conquest, purchase, or donation; or held for a longer or shorter term of years) in those days, ordinarily conveyed with it a right of acting as a judge within the extent of that land. — He moreover decided all matters of dispute, which arose amongst his dependants, and by his own authority chiefly punished the offenders as he thought they deserved, sometimes with mulcts or fines, (part of which came to himself) and in some cases even with death; at least this was practised, and allowed by them in the earlier ages of their settlement. For it must be acknowledged, that when the times grew more tranquil and peaceable; and the milder precepts of Christianity had began to introduce a reformation in their antient customs, the native and original power of the masters of families, or the proprietors of land, seems to have been reduced within more limited and straiter bounds; the life of a man, however low his condition might be, being deemed of too great a value, to be

be left to the arbitrary will of any single person whatever, subject, as he was, to be continually misled by the heat and violence of passion. In capital cases, therefore, the criminal was usually referred to a superior jurisdiction; or left to be judged by such persons, as the king from time to time sent over the nation, in his own name, both to assist his great men in the distribution of justice to their dependants, and to see, that he was not wronged of that proportion of the mulcts, which came to his share upon the infliction of this sort of punishment. By this means therefore the public peace was extremely well preserved amongst the poorer and meaner sort of people, whose want of a proper education, and instruction in the founder principles of religion, and the general

\* *Spelman. Gloss.* HALIGEMOT. Conventus aulae, hoc est, curiae dominicalis manerii, vel baronis in villis et dominiis: seu tribunalum, wardarum, et societatum in burgis, et urbibus. Vox hactenus non omnino evanuit. *Penshurst Haligemot* enim hodie dicta. But what this very diligent enquirer produces upon this subject, in his *Remains*, p. 50. will be judged more pertinent to our present purpose. "the *Theinge*, or lord of the town, (whom "the Normans called a baron) had of old jurisdiction over them "of his own town, (being as it were his colony) and, as *Cor-* "nelius Tacitus saith, did *Agricolis suis jus dicere*. For those, "whom we now call tenants, were, in those antient times, but "husbandmen dwelling upon the soil of the lord, etc." [These reasons,

neral good of the public, renders them ever obnoxious to the sudden starts of a licentious will, and makes them ready to seize every occasion of riot, tumult, and confusion. How this inferior court of justice, if we may so term it, was denominated by our ancestors, whilst they were yet upon the continent, is not, I think, sufficiently evident from our annals; but in the later ages of the Anglo-Saxon government, we find it expressly called the Hall-mote, or assembly of the Manour; at least, it had that name given to it, where the land or estate of the proprietor was considerable. Some remains of this jurisdiction are still preserved in the courts-baron, as they were afterwards styled by the Normans<sup>a</sup>.

55. Thus was the strong foundation of  
social

reasons, and indeed many others which might be produced, sufficiently evince, that it was not the Thanes only, but every other Landholder, that is, that every native Anglo-Saxon, who joined with Hengist in his expedition, had, and actually exercised, this privilege of judging their own households and dependants. As low down as the laws of Henry I, this court is expressly called *curia dominorum*.] Our author, *Spelman*, afterwards adds, “out of which usage, the *Courts-Baron* took their beginning, and the lords of towns and manours gained the privilege of holding plea and jurisdiction, within those their territories, over their tenants and followers; who thereupon are to this day called *Sectatores*, and in French *Suitres*: but the Saxons  
“ themselves

social peace and tranquillity laid, in the proper subordination of each man's family, and dependants, to their own master. But this not being found sufficient of itself to secure the national happiness, the wisdom of our forefathers did not stop here, but went on to complete the work. For as various matters of difference and controversy must be continually arising between the several landholders themselves, who were altogether independent of each other, as well as amongst their followers and tenants—in order to put a stop to all the numerous train of evils, which would naturally flow from so fertile a source; and to bring the misdemeanors, and crimes, of the greatest, as well as of the meanest to condign punishment; and, indeed, to provide, as far as possible, for the common interest of  
of

“ themselves called this jurisdiction *Sacha*, and *Socha*, signifying  
 “ thereby *Causarum actionem, et libertatem judicandi*; for *Sacha*  
 “ signifyeth *causa*, in which sense we yet use it, when we say for  
 “ *God's sake*; and *Soca* signifyeth liberty, or privilege. But by  
 “ this manner the Lords of towns, (as *ex consuetudine regni*)  
 “ came to have jurisdiction over their tenants and followers,  
 “ and to hold plea of all things touching land. But as touching  
 “ cognizance in criminal matters, they had not otherwise to  
 “ meddle therewith [that is, in later times] “ than by the king's  
 “ charters.” So likewise in Edward the confessor's Latin laws,  
 (as they are called) *Tit. GREVE*. we find it provided, *Barones*,  
 (that

of the whole province (county, or shire, as it was more generally called) in all other respects, both military and civil—we find it a custom, constantly observed by all those northern conquerors, who divided the Roman empire amongst them, for the landholders of every province, or larger district, regularly to meet together twice every year at least, or oftner, if the necessities of the public were thought to demand it—that being, by this means, united, as it were, into one body, and acting together in concert, they might add a greater dignity, as well as authority, to whatever should be determined and ratified by them. This convention of the whole county was commonly called the *Shire mot* or the meeting of the shire\*.

56. In this general assembly of the  
county,

(that is, in general, every master of a large estate in land, tho' more peculiarly the possessors of Thane-land) qui suas consuetudines habent, et qui suam habent curiam, de suis hominibus videant etc. BARONES, says Sir *Hen. Spelman*, Gloss p. 70. were sometimes taken *pro libere tenentibus in genere*: They are so taken in the acts of a county court held in Worcester-shire (see *Hicks's Ep. Diffort.* p. 43.) where the word Baron is used in the same sense as Thane, in the Anglo-Saxon records of this council, and can mean nothing but the Freeholders, or rather the Landholders of the county in general.

\* *Spelman. voce* GEMOT. *Sciregemot* (si pluries opus non esset)  
L bis

county, (at which not only the Ealdorman, Bishop, and other magistrates, but likewise every landholder belonging to it, was required to attend in person; and which,

bis solummodo in anno indicebatur. Aderat provinciae comes, aderat episcopus, aderant magnates omnes comitatenses. — De causis hic cognitum est tam criminalibus, quam civilibus, tam ecclesiasticis quam laicis; sed jurisdictiones postea separavit Gul. primus. — Much like to our county-courts were the French and Langobard *Malls*; as might be shewn from many instances. I shall only take notice of one provision, concerning these meetings, in the *Capitulars of Charles the great*, l. 7. Ad mallum nemo venire tardet, unum circa aestatem, alterum circa autumnum; ad aliud vero, si necessitas fuerit, vel si denunciatio Regis urgeat, vocatus venire nemo tardet. — In like manner our general county courts were regularly held every Spring and Autumn.

• Amongst the laws of Hen. I. (See *Wilkins LL. Anglo-Sax.* p. 240.) I find a constitution concerning the persons, who were to be present at these County courts, which constitution, as is expressly observed, was formed upon antient custom) Inter sint autem episcopi, comites, vice-domini, vicarii, centenarii, aldermanni, praefecti, praepositi, Barones, vavasores, tungrevii, et ceteri *Terrarum domini*, diligenter intendentes ne malorum impunitas, aut Graviorum pravitas, vel judicum subversio solita miseros laceratione conficiant. Agantur itaque *primo* debita verae christianitatis jura; *secundo* regis placita; *postremo*, causae singulorum dignis satisfactionibus expleantur, et quoscunque *Scyresmot* discordantes inveniet, vel amore congreget, vel sequestret judicio. — “Of all which, (says *Spelman in his remains* p. 54.) because I find a notable precedent in a synodal edict made by Charles the Bald, Emperor and King of France (in *Concil. Cariffiaco An. Dom. 856.*) I will here add it; not to shew, that our Saxons took their form of government from the French, but that both the French and they, as brethren descending from one parent, the Germans, kept the rights, and laws of their natural country.” — The edict is as follows. “The Bishops in their dioceses, and the Justices itinerant or Aldermen in their circuits, and the Earls in their counties, shall hold their pleas together: whereunto all ministers and officers of the  
“common-

which, by the laws of Athelstan, was to be proclaimed a week before hand)—in the shire-gemot, I say, were decided all causes, as well those which related to the ecclesiastical,

“ commonwealth, all the King’s Barons, and all other whatsoever they be, or whose tenants soever they be, within the same dioceses and counties, without any respect of persons, excuse or delay, shall assemble together: and the Bishop of that diocese, having briefly noted sentences touching the matter out of the evangelists, apostles, and prophets, shall read them to the people; and also the decrees apostolic, and the canons of the church, and, in open and plain terms, shall instruct them all, what manner, and how great a sin it is to violate or spoil the church, and what and how great penance, and what merciless and severe punishment it requireth, with other accustomed, necessary, and profitable admonishments. “ The Aldermen also or Justices, shall note down such sentences of law, as they call to mind; and shall publish unto them the constitutions of us and our predecessors, Kings and Emperors, gathered together touching this matter. And the Bishops by the authority of God and the Apostles; and the Aldermen, or Justices, and Earls, under the penalty of the Kings laws, shall with all the care they can prohibit etc.”—As to the ecclesiastical causes, which we have remarked to have been brought before these county meetings, our author observes, “ that in his opinion, they were such ecclesiastical causes, as were grounded upon the ecclesiastical laws, made by the Kings themselves, for the government of the church (for many such there were in almost every King’s time) and not for matters rising out of the Roman canons, which haply were determinable only before the Bishop and his ministers.”—See what Mr. St. Amand says of these county courts, in his *Essay on the legislative power of England* p. 15. where he compares them both to the French provincial parliaments, and to the old cortes in the numerous kingdoms of Spain. For, not improperly, each county amongst us might formerly be regarded as a sort of little kingdom, as it were; as its governor, in fact, was frequently styled princeps, regulus, and sometimes rex.

fiastical, as the civil state of the county. Here, likewise, were heard all appeals from, or complaints of the free tenant, or dependant against his lord; as also the accusation of the lord against his follower, where the crime committed was of so atrocious a nature, as to require a greater punishment, than he had authority to inflict. In this general assembly, the causes of religion and the church were always first heard, and determined; the second place was given to the pleas of the crown; and, lastly the causes of private persons fell under its cognisance: but in all these instances, either a select number of landholders, or all in general who were present at the meeting (for this is a point not yet sufficiently decided) were judges of the fact, and, according as they brought in their verdict, sentence was afterwards given by the presidents, who, ordinarily, were the Earl, and Bishop, together with the King's deputy or deputies. Here likewise were all conveyances of land, whether by will, purchase, or donation, as well as mortgages, usually made, registred, and witnessed; the new laws promulgated, slaves manumitted, oaths  
of

of fidelity to the king taken, vows of mutual good will and friendship to one another entered into, the officers of the county appointed, and every thing else transacted, which might any ways relate to, or concern the common interest of the whole province. Nor was the business of these courts carried on in a licentious, and tumultuous manner; but, on the contrary, every thing was transacted with the greatest appearance of decency, order, and regularity: the governor of the county himself (whatever was his title, whether Ealdorman, Duke, Earl, or Count) being obliged to attend in person, to point out the business to the assembly, and to preside in it; as was, likewise, the bishop of the diocese, after the establishment of Christianity; whose superior knowledge, the gravity and severity of whose character, together with the sanctity of that religion, which he professed, pointed him out as an extremely proper person to be present at the administration of justice, and to moderate in a meeting, where good manners, mutual harmony, strict honesty and fidelity were to be recommended to the general observation.

tion. And lest the governor himself (thro' the necessity of the wars, 'or any other lawful avocation) might at any time be prevented from being present; or, when present, thro' want of attention or leisure, might not be so well acquainted with the customs of his country, as his office required; and, by that means, a stop, for some time, be put to the regular and impartial distribution of justice; it was usual for the king to send two or more persons of his own court, well versed in the laws of the nation, both to assist the Earl, as his counsellors and assessors, and also to take care of that share of the fines, which

<sup>b</sup> Vid. *Spelman. in voce* ALDERMANNUS CIVITATIS; and LL. *Ed. Conf.* Tit. HERETOCH. Thus likewise the counts, or governors of provinces abroad, had their counsellors and assessors to assist and advise them. Muratori diss. decima p. 488. Quum comitis munus fere semper illi tantum gererent, qui sanguinis splendorem fortunis multis adjungerent, atque ii insuper militiae potius quam literis studerent: facile conjicere possumus, non eam fuisse magnatibus ejusmodi peritiam legum, et scientiam, quam exigit ardua criminalium, et forensium judiciorum, provincia. Male ergo fuerit, inquires, homini causam suam acturo apud Jüdices adeo imbecilles. Verum et huic discrimini consulere antiqui reges; quippe comitibus, quoties agitandae ac dirimendae lites erant, ad consilium, et opem, adjunxere minores alios judices, juris nempe peritos eorum temporum, quos aequae atque comites, *Graphiones*, Teutonica voce veteres appellabant: *Salici* vero etiam *Rachimburgios* et *Tunginos*—demum, ubi sententia erat pronuncianda; nihil agebat comes absque consilio et consensu eorundem, ut ex placitis, sive judiciis publicis constat.—The emperor Charles the great seems to have given the

which fell to the supreme magistrate, in cases where it was necessary to impose pecuniary punishments. — These delegates were afterwards (at least as early as Alfred's days) changed into two standing magistrates nominated by the king; one of them called the Alderman of the county, and the other the Heretoch — the office of the former (not unlike our present sheriffs) more particularly regarding the civil affairs of the province; as that of the latter (not unlike our present lords lieutenants) respected its military state<sup>b</sup>.

### 57. Now with regard to the Governor, or Earl

the first occasion of the institution of *itinerant Judges*, at least I find them first taken notice of amongst his constitutions, under the denomination of *Missi Regis*. Edicebant (says *Muratori*, p. 455.) ejusmodi iudices extra ordinem adlecti, se missos a Regibus et Augustis ad singulorum hominum lites ac intentiones, hoc est, contentiones audiendas ac deliberandas: et quandoquidem non uno in loco consistere solebant, sed per provinciam et pagos vagabantur in locis singulis disciplinam ac justitiam restaurati, ideo *Missi discurrentes* appellabantur. That the Kings Thanes, here in England, were sent by their master upon the like occasions is evident from the account of a shire-mot held in Herefordshire, the acts of which may be seen in *Hick's Ep. Dissert.* p. 2. See likewise, *ibid.* p. 48. These Justices itinerant sat with the ordinary Judges of the district, not only as a check upon them, but likewise as their counsel and assistance, as fully appears from old charters still extant. Now as our king Egbert had been brought up in the court of Charlemagne, 'tis not improbable, that he first introduced this custom of itinerant judges, or, as they may rather be called, lawyers in England;

Earl as he began to be called towards the Danish period of our history, he was certainly the supreme officer of the county. Into his hands was the scale of justice committed, and under his auspices were all the freemen of the province obliged to go to battle; for as to the Thanes, they always attended the king's own standard. He succeeded to all the rights of the antient German princes, and accordingly, by the early Latin writers of our history, we find him usually honoured with the same illustrious title. The power which he exercised within the limits of his jurisdiction exactly resembled that of the king himself, excepting only the mere extent of territory: his revenue, like his royal master's, was made up of the produce of his own demesnes, together with a certain proportion of the profits of the county, arising from mulcts and other casualties; that is, he had one third part of them, whilst the other

for that some such sort of *missi regis* there were very early in this kingdom may be concluded from what we are told, in the *mirror of justices*, of king Alfred's punishing so many judges in one year.

<sup>a</sup> See *Selden's titles of Honour*, p. 653, and *Spelman's Glossary*, p. 141. COMES. — quod et Caroli magni aevo in usu fuisse apud Gallos, liquet ex capitul. Hludovici Imp. etc.

<sup>b</sup> See

other two were divided between the king and other persons<sup>a</sup>.—The government of counties, towns and castles being looked upon in the light of fees or benefices, there can be no doubt, but that they were regularly nominated to by the king, and destined by him as rewards for the fidelity of his Thanes, unless, which was frequently the case, they were sold for money.—And as they were originally disposed of at the choice of the prince, so was it in his power to bestow them for a longer, or shorter time, as he pleased, or to leave the possession of them entirely arbitrary<sup>b</sup>. Here then we have a deviation from the custom observed by our ancestors in their own country, where the governors of all the larger districts were appointed by election—but how this alteration in their former polity came into use, will very naturally be accounted for, from the difference of their situation in Britain from what it had been  
in

<sup>a</sup> See *Saxon Annals Ann.* 694. Now that these governors might be turned out of their offices, if they did not discharge their duty as they ought, is evident from what king Alfred says; where he threatens them with this very punishment, (the removal from their office) if they did not immediately apply themselves to the study of the laws, literature, etc.

• *Spelman's*.

in Germany.—The fatigue of continually attending to the business of the state; the trouble and inconvenience, which followed their frequent general meetings, (especially as many of them were settled in distant parts of the kingdom) as it tended to render the body of the nation less regardful of the public administration; so would it of course open the eyes of those, to whom they had entrusted the executive power of the commonwealth, and put them upon the watch, ready to seize every opportunity of extending an authority, which they began to think not sufficient for the advancement of their more enlarged and ambitious views.

58. But besides these particular provisions, respecting the quiet government of and regular distribution of justice to private families, and distinct counties; agreeably to the same plan, in order to secure the peace and prosperity of the whole state, we find another, and still superior, assembly  
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\* *Spelman's Gloss.* In *Folk-moto*, semel quotannis sub initio calendarum Maii (tanquam in annuo parlamento) convenere regni principes, tam episcopi quam magistratus, liberique homines. Jurantur laici omnes coram episcopis in mutuum foedus, in fidelitatem

established amongst the Anglo-Saxons ; namely, a general meeting of the whole nation—wherein all such disputes, or matters of contention, as had arisen between the several independent members of the different provinces of the kingdom, were finally adjusted and decided ; and all other matters, relating to the civil, military, or religious government of the nation, examined, debated, and determined. In this great assembly of the whole nation (*Folkmote*, or *Mycelgemot*, as it was usually termed by themselves) was lodged the legislative power of the community, or the sovereign authority. — By such easy and uniform gradations did the antient Gothick polity grow towards perfection ; so compleat was every part in itself ; and so aptly did each several member, in its place, contribute to the strength and ornament of the whole structure. — But here let us stand still a while, and take a more near and intimate survey of this sovereign assembly, the basis of the Anglo-

litatem regis, et in jura regni conservanda. Consulitur de communi salute, de pace, de bello, et utilitate publica promovenda : adhibetur præterea *Folcmotum* in repentino omni discrimine etc.

Anglo-Saxon constitution, and the foundation, as well as preservation, of all the civil liberty, which subsisted amongst them : let us view it in its constituent members, in its peculiar privileges and prerogatives, and in the extent of power and authority, which originally belonged to its president or king.—I am not ignorant, indeed, that our best writers are much divided upon each of these heads ; nor do I propose to take any notice of their disagreements with each other, or to endeavour to reconcile their several differences. If thro' the dark and intricate labyrinths of antiquity, I may, haply, be able to feel out my own way with a good degree of probability, I shall be but little solicitous about the wandrings and errors of those, who have attempted the same road before me ; and as I have no hypothesis to serve, no party to flatter, and no other end in making this research, than the desire of finding out, and vindicating truth, it is possible that I may hit the right path easier than those, whose greater abilities have been led aside by some wrong biases. But the success of my attempt must  
be

be entirely submitted to the judgement of the candid and intelligent reader.

59. The first point, then, to be enquired into is, who were the constituent members of the Anglo-Saxon *Mycel-gemots*, or parliaments, as they were called, some time after the Norman conquest?—Now to this question I shall venture to return a ready and direct answer; that every proprietor of land in the kingdom, at least to the amount of five hydes, (whether of the clergy or laity) who was of the requisite age, and had not forfeited this privilege by some previous misdemeanour, had originally a right to be present there in person, whenever he pleased to make use of it. This position, however strange or novel it may appear at first view, will, I am persuaded, after due examination, be found agreeable to antient history, and conformable to the fundamental politics of all these northern conquerors. For that every proprietor of land was even obliged to be present at the public meeting of his county, to take care, as far as lay in his power, of its interest, and to transact such business, as was brought thither for the common decision, is acknowledged  
on

on all hands\*. But there was no other difference between the assemblies of the county, and those of the whole kingdom, than between a greater and lesser; between a general meeting and one more particular. The *Mysel-Gemot* could be nothing else but a collection of the several *Shire-Gemots* of that particular state, or kingdom, where the meeting was held; here was the common center, wherein all the separate lines of judicature were united. They were both built upon one similar and uniform plan; and the same reasons, which made it necessary for the *Landholder* to be present at the one, would give him an equal title to assist at the other; both these privileges, or burthens rather as they were then

\* *Spelman V. SCIREGEMOT.* Videtur hoc idem fuisse quod jam dicimus turnum vicecomitis: nam et turnus olim bis in anno tenebatur, aderantque omnes una magnates comitatus, et *tenentes liberi* — sed statuto Marburgensi archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, virisque omnibus religiosis indultum est, ut non appareant in turnis nisi pluri exacti necessitate. — From whence it is evident, that till the making of that statute, which was a long time after the Norman invasion, all the persons abovementioned were obliged to be present (see LL. Athelst. apud *Wilkins* cap. 20.) And we have before seen from the constitutions of Henry I. that all the *Terrarum domini* were to be present; which is sufficient to explain the *liberi tenentes* above — Tho' the ecclesiastick order were certainly not admitted into the legislative assemblies of the Italian Lombards; yet

then reputed to be, were built upon the same common foundation.

60. For the *Landholders* amongst the antient Anglo-Saxons (as they had no hereditary nobility in the sense wherein we now understand the word, namely, a nobility distinguished by special rights, titles, privileges, and exemptions, which regularly descended to their families) were all of them originally equal; and however honoured with the stile of Ealdormen, Greves, Heretoges, or Thanes; and a higher value set upon the lives of some than others; yet were they not, upon this account, (excepting only in the execution of their several offices) superior in authority to the other untitled proprietors of land<sup>a</sup>. For from  
whence

yet that the superior or prelatical clergy had a right, and did actually frequent these meetings in great numbers, is too evident from the preambles to the laws of the times, to need particular quotations. See however *Chron. Saxon. Ann.* 656. It was not only their superior character for sanctity of life, and skill in literature, which entitled them to this privilege, but more particularly their being proprietors of land.

<sup>a</sup> *Spelm. V. Domesdei.* Eo seculo (that is, when domes-day-record was made, and the assertion may with equal truth be applied to the times preceding the conquest) non distrahebantur prædia in vulgus proprietariorum (ut hodie passim) sed villa integra penes dominum unum plerumque, vel alterum permanebat, plebe (*i. e.* the slaves, Britons, and Ceorls) agriculturam sub eodem exercebant. In tota Norfolkia, quæ ad quinquaginta milliaria (vel eo  
supra)

whence could they derive such a superiority? and what was there, which could put any difference between them in this respect, upon their settlement in Britain, when, most indisputably, there neither was, nor could be any, in Germany, where the land was annually divided between every member of the community. They all held their estates alike, by the acquisition of their swords; they had all an equal jurisdiction over their own estates, whether great, or small; they were all obliged to contribute to the repair of castles and publick bridges; to appear in arms, whenever their assistance was called for by the proper authority; and were all alike (for any thing that now appears to the contrary) capable of being elected into offices

supra) extenditur, ad triginta plus minus dilatatur, sexaginta et sex tantummodo numerantur soli (feu fundi) domini.

<sup>b</sup> The constitution, customs, manners, and even language of the antient Franks, were so entirely agreeable to those of our Anglo-Saxons, that they may very justly be considered as a different tribe of the same people — What therefore *Boulainvilliers*, in his *Memoires historiques*, lays down as the advantages accruing to the former from their conquest of Gaul, may with equal justice be applied to our ancestors, upon their acquisition of Britain: p. 19. Apres avoir établi l'indépendance et la Noblesse Française (by *French Noblesse*, this author always means the posterity of those Franks, who had been actually engaged in the conquest of Gaul, all of them in general without exception) “ Apres avoir établi l'indépendance et la noblesse Française

fices of trust, and of being promoted from the family of their patron to the vacant benefices ; nor can I find but that the suffrage of the poorest was equally valid with that of the richest, tho' the greatest deference was always payed by them to seniority : whence then arose the peculiar privilege, or right, of being members of the Mycelgemot, which is supposed to belong to some of them, exclusive of the rest of their brethren ? certainly there seems not to be any foundation in history for such a notion ; for whoever was a proprietor of land in his own right, in the eye of the constitution, was a member of the community, and as such, was entitled to all the privileges of the rest of the landholders<sup>b</sup>.

## 61. Tho'

“ François, je me crois obligé de montrer en détail quels en  
 “ étoient les avantages réels ; que je réduis à quatre : 1. l'ex-  
 “ emption de toutes charges, à l'exception du service militaire.  
 “ 2. le partage de tout ce qui étoit acquis en commun, butin ou  
 “ terres. 3. le droit de juger ses pareils, et de ne pouvoir être ju-  
 “ gé que par eux en matière criminelle, *avec celui de délibérer sur*  
 “ *toutes les causes, et matieres qui étoient portées à l'assemblée géné-*  
 “ *rale du champ de Mars.* 4. enfin, le droit de défendre sa per-  
 “ sonne, ses biens, ses amis, son intérêt, et de les revendiquer,  
 “ lors qu'ils étoient attaqués par qui que ce put être.” Our au-  
 thor proves each of these points at large ; and the same, it is most  
 evident from all remains of their history, were the privileges  
 of the Anglo-Saxons, as might be fully shewn, if what has already  
 been observed was not sufficient to establish their dignity, and

61. Tho' therefore our ancestors, both in England as well as formerly in Germany, still continued to pay a great personal regard to such of their brethren as had merited well of the community, either by their valour, or by any other means; and were ready up-  
on

mutual independence. As to the third of these privileges, the right which every Frank had of being present at their fields of March (or May, as they began to be called in King Pepin's time) I must not omit what the same author has observed upon this point: *Mem. hist.* p. 47. l'on voit aussi qu'il étoit impossible, que cette forme de deliberation pût subsister, du moins après le partage des terres, qui divisa les François les uns des autres, et les éloigna d'une distance considerable; l'éloignement des lieux, la difficulté des voyages, la dépense qu'ils auroient exigé, étoient autant de raisons qui dispensoient la plus grande partie de la nation de se trouver aux assemblées; et c'est aussi pourquoi on ne les tenoit jamais consecutivement dans une même lieu, et qu'on les transportoit d'un bout de Royaume à l'autre—afin que chaque contrée pût jouir à son tour des avantages de l'assemblée, savoir, le François du droit d'y assister, et d'y deliberer, et le sujet du profit résultant de la grande consommation, que pouvoit faire une si nombreuse compagnie. There was not so great need to have recourse to this expedient in Britain, where the conquered country was of much less extent than that of Gaul, and the number of the conquerors much fewer; especially if we consider, that the Mycel-gemot, for near three hundred years, unless upon extraordinary occasions, was confined to each of the seven little kingdoms. After the union, tho' frequently it was held at London, yet it appears from Dr. Hady's history of convocations, where all these Mycel-gemots are accurately set down, that it was convened in many other parts of the kingdom, for the same reason, it is most likely, that the champs of Mars were in France. And here it may not be improper to observe, that we shall make very wrong conclusions of the number of those, who had a right to be present at these national assemblies, if we have the least eye upon our present number of landholders.—Perhaps there never were, during the whole Anglo-Saxon government, (from the ar-  
rival

on all occasions to reverence their posterity, to follow them upon any military expedition, and to prefer them to vacant benefices; tho' they looked upon them as noble, and of a rank superior to such of their brethren, as had not the deserts of  
their

rival of Hengist to the time of the conquest) 5000 freeborn masters of families etc. in the kingdom, at a time, who had a right, even upon this hypothesis, to be present at these meetings; this I could make probable, was there any need of it.—But, I believe, I shall rather be told, that this was much too great a number with whom to entrust the legislative power.—But let him, who makes this objection, turn his eye upon the antient popular governments of Athens, Lacedemon etc. in Greece; or upon that of Rome, whose whole multitude of citizens had, as our Anglo-Saxons, an equal right to be present in the legislative assemblies.—That great multitudes actually were present in the Anglo-Saxon Mycelgemots, is evident not only from the expressions made use of upon these occasions, (such as, *Populi copiosa multitudo, innumera, infinita cleri et populi multitudo*, and many other of the like tenor too frequent to be particularly enumerated) but likewise, from the places where the assembly was held, which were generally (as in France) in a large open field, capable of receiving a great company, and most commonly by the side of a river for the convenience of water. This custom was observed amongst us, as low down as King John's time: witness the famous parliament held, in the seventeenth year of that prince's reign, in Runnymede near Windsor. So *Matt. Westm. An. 1215*.—In prato quod dicitur *Rune-Mead*, quod interpretatur *Pratum consilii*, eo quod ab antiquis temporibus ibi de pace regni saepius consilia tractabantur. See *Hody of Convocations*, p. 34. In the second of *Ethelbert's laws* still extant, it is said, si rex *populum* suum ad se vocaverit, that is, all his landholders; not his officers of state only, for these could not be very many in the little kingdom of Kent, but his whole people, or nation: and much to the same purpose is what we meet with in *Ina's laws*, and in other the old Saxon constitutions, where the *people* in general are mentioned without any other distinction.

their ancestors to recommend them to the public notice and distinction; yet, I think, the only true political distinction of the ancient Anglo-Saxons ought to be into the proprietors of land, and non-proprietors (for as in the times, which we are now surveying, our ancestors contemned trade, as an occupation beneath the attention of a people able to manage their swords; and, consequently, had very little regard to the interest of those, who endeavoured to support themselves by ministering to the necessities of other people). The proprietors were all equal, and enjoyed, in common, the right of being present both at the assembly of their province, and the general meeting of the whole state; tho' some of them, according to the quantity of land, which they might happen to be in possession of, or the greatness of their riches, and number of dependants,

or

\* Tho' merely to have been a native free-born Saxon, and engaged in the expedition into Britain, entitled the adventurer to a share in the conquered land, and, consequently, to all the privileges annexed thereto, without any regard had to the quantity possessed by him; yet am I not certain, that this was the case in the Ceorls or *New-men*, that is, in those, who by their own industry, or the liberality of their benefactors, became masters of land, which by birth they were not entitled to; I am not certain,

OR on account of their superior valour, wisdom, and eloquence, or the renowned actions of their forefathers, must necessarily acquire and retain a more extensive influence and authority, than others, who were not so strongly recommended to the publick observation by any such commanding advantages and qualifications. The non-proprietors, such as were the ceorls and soc-men, (without including the bondmen and slaves) tho' they were free as to their persons, and had their lives estimated as such, in the laws of their country, yet not being possessors of land in their own right, were scarcely looked upon as members of the great community; and consequently had no share in the supreme and legislative power, but were supposed to be present, and to give their consent to the laws and ordinances of the government,

tain, I say, but that in these instances a fixed, or determinate quantity of acres might be necessary to qualify them for the privileges of the original landholders. For we find it established by one of their laws, that the Ceorl was to be master of five hides of land, before he could be put upon the rank of a King's-Thane.—This, indeed, might be so, and the possessor of a less quantity, notwithstanding, be made capable of enjoying all the lesser privileges of the landholders; he might be even forced to undergo all the

ment, in the persons of their patrons and protectors, or of those, whose lands they occupied.—But here, perhaps, it may be asked, whether upon the plan now suggested, there be not an essential difference between the persons, who composed the great assembly in England, and those, in whose hands the sovereign power had been formerly lodged in Germany? For does not the Roman historian, whose authority, in this case, no one calls in question, expressly tell us, that nothing in that country had the force of a law, till it had been confirmed by the sanction of the common people, who, however, upon the present hypothesis, are entirely excluded from all concern in the affairs of the public?

62. The Roman author, I confess, does make use of the expression *penes Plebem*, upon the occasion abovementioned; tho' I am by no means of opinion, that *Plebem* in this place ought to be translated the *Commonalty*, or *Common People*, in the sense wherein we usually understand these words,

namely,

burdens of the state, as they were then estimated, such as attendance in the public assemblies, tho' his possessions might not amount to quite five hides of land. But this is not a point of such consequence,

namely, to comprehend artificers, mechanics, and, in general, the vulgar, and lowest order of the nation. It is, indeed, impossible, that this should be the historian's meaning. For if we reflect a little with ourselves, we shall soon perceive, that, in a political sense, there could be no more than three ranks or orders of men amongst the German-Saxons, that is, the slaves, the freed-men, and the free-born natives, or proprietors of land, those I mean, amongst whom the territories were annually divided. Now nothing is more certain, than that neither of the two former orders was at all concerned in the civil administration; they are entirely excluded by Tacitus himself<sup>a</sup>; and as to the last, tho' some of them might be regarded, either on the account of their own or their ancestors merit, as more noble than others; and for that reason might be distinguished by especial favours, and have their lives valued at a higher price; yet with respect to the community or civil constitution, they were all equal;

consequence, as needs to be peremptorily determined on either side.

<sup>a</sup> See above, p. 119. N. d.

equal ; nor could there, indeed, possibly be any real difference between them, except such as they made themselves, by conferring offices of trust, or such as the superior qualifications of mind or body might give them, as long as the lands were annually distributed amongst all the individuals, according to each man's character and necessities. By *Plebem* therefore, in the place alluded to, our justly celebrated author must mean the bulk of the nation ; the collected body of the native free-men, the *populus Helveticus, Suevicus*, etc. inferior, indeed, to their public officers, their princes, and their generals, taken separately, but superior to them all in their collective capacity.—I have been more particular in examining and laying open this leading point, that we might be better able to give a reason to those people, who (according to the plan which they had formed of the antient German constitution) have much wondered, that we never meet with the least mention of the vulgar or common people, amongst those, who are described as being present at our old Anglo-Saxon Mycel-

† *Vid. Spelman's Gloss. PARLIAMENTUM.*

Mycel-Gemots<sup>b</sup>—They had no right to be there ; they never enjoyed this privilege, whilst they continued in Germany, if by *Common People* are understood those persons, whose business it was to cultivate the land, and to be employed in the very few mechanic arts, which, in those days, subsisted amongst them—It must not be omitted in this place, that it was particularly provided in the first written body of Anglo-Saxon laws now extant, that no man should be molested in his way to the Mycel-Gemot, or whilst he attended the business of the public ; and that whoever broke the peace, at that time, by his unruly behaviour, should be severely punished with a heavier fine than ordinary<sup>c</sup>.

63. But here may it reasonably be enquired — how were the public debates managed, and how carried on with proper order and decency, in the midst of so large and tumultuous an assembly? was every man left to his own discretion, to propose what points he pleased to the public consideration, and to insist upon their examination? nothing but disorder and confusion could flow

<sup>c</sup> See the second law of King Ethelbert, in *Wilkins's Collection*.

flow from so extravagant a liberty, or licence rather, as this. A people wholly busied in the exercise of arms, and many of them living in distant and remote corners of the nation, as they could not be very well acquainted with the true interest of the kingdom; so were they but indifferently qualified for the important office of correcting old customs, and of preparing and drawing up new constitutions, whatever they might be of judging of their general expediency, after they were once layed before them, and properly explained. In ancient Germany, therefore, as well as in Athens, Lacedaemon, Carthage, Rome, and indeed in all other popular states (as far as we are acquainted with their history) we always find a Senate appointed; that is, a certain number of the oldest, wisest, and most experienced persons selected, whose especial business it was continually to watch over, and superintend, the interests of the public both at home and abroad: to examine every thing wherein the community was any ways concerned; and to prepare such laws and regulations as might, in due season, be proposed to the rest

rest of their brethren, to the collected body of the people, for their sanction and authority — These were as eyes to the body-politic, without whose cautious foresight, the strength and vigour of the other members must, in many instances, have proved destructive, rather than beneficial, to their own true interest. But, in England, where shall we find such a senate as is here described, distinct from the Mycel-gemot, or sovereign legislative assembly? was every thing, then, left to the confused and unsteady management and determination of an ignorant, and capricious multitude? this seems to have been an essential defect in the old Anglo-Saxon constitution.

64. Our antient historians, it is true, make not the least mention of any Senate in England, such as formerly subsisted amongst our fore-fathers in Germany; nor have our later antiquaries ever pretended to collect any such fixed and standing council, either from tradition, or from the scattered laws and fragments of the Anglo-Saxons, being quite silent, as far as I have been able to observe, upon this head. But let not their omission either prevent, or mis-  
lead

lead our research. In dark and dubious questions, he who hopes to arrive at truth, must think and examine for himself. Do we then find nothing similar to a standing Senate in the old English form of government? no previous council, whose business it was to watch over the community, to examine and distinguish between the true and apparent interest of the public; to interpose upon sudden emergencies; to settle disputes between the greater members of the community, during the intervals of the Mycel-gemots; to draw up questions, and to prepare laws for the general sanction? or in this point only, tho' of such mighty consequence to the ready dispatch of business, and to the general welfare, did our Anglo-Saxons depart from the original system of their polity? I can by no means think so! on the contrary, as we may manifestly trace the antient Germanic polity thro' all the other branches of their civil government; so I am well persuaded, that if we find not some remains of their Senate, likewise, in this kingdom, it must be owing rather to the defective and imperfect account which is left us of these matters,

ters, than to a total inobſervation, or abolition, of the conſtitution itſelf. But this is not the caſe : we have, I think, an Anglo-Saxon Senate, in its utmoſt extent and deſcription, in what the writings of thoſe times particularly ſtile the *Wittena-gemot*, (or meeting of wiſe men) as a diſtinct aſſembly from the *Mycel-gemot*. For as aforetime, in their native country, it was the ſolemn office of the princes, together with the Generaliſſimo after his appointment, to be as a ſtanding council to the community ; to adjuſt and prepare matters for the public deliberation ; and to judge and determine cauſes under certain reſtrictions upon their own authority : ſo was the *Wittena-gemot* (or King's court, as we find it ſometimes denominated) in all reſpects exactly ſimilar to it, being compoſed of the King's *Companions*, or Thanes, of the governors of the ſeveral counties, and, (after the eſtabliſhment of Chriſtianity) of the Biſhops, and other dignified Clergymen, whoſe large property, as well as ſuperior wiſdom, and ſanctity pointed them out as proper counſellors to the ſtate, in all affairs, which concerned the purpoſes of religion, the reformation

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tion of manners, or the common good.— Here then is the very council, which we are enquiring after; an assembly of the greatest, best, and wisest men of the nation, appointed and stationed by their country as a continual watch over the general interest, without whose previous examination and approbation, nothing, I believe, could regularly come before the collected body of Landholders. As these persons were supposed to be best acquainted with the exigences of the public, it was their duty to propose what they thought most expedient for the good of the whole, whether relative to peace, or war; the new laws, especially, seem all to have been drawn up and prepared by them, tho' nothing, which they did of this kind, was obligatory to the community, until it had received the general confirmation. They were, moreover, entrusted with the determination of many cases of private property or dispute, especially

\* About the middle and declining ages of the Roman state, the emperors usually held in their palaces a senate or privy council, (*Cassiodorus* expressly terms it *senatum minorem*) much of the nature of this, which we have been describing in the text, called by the writers of those times *Comitatus*, a word more particularly applicable to the antient curiae regum, or lesser

cially between the Landholders of different counties. Appeals, likewise, from the several Shire-mots were in certain cases permitted to be brought to a rehearing before them. The King himself was at their head, and supposed to be always present at their deliberations. They seem, also, to have enjoyed the sole right of judging one another in all cases whatever, both civil and criminal. This was certainly one of the essential privileges of a King's Thane; and it may be observed, the greatest part of the Wittenagemot, on account of the offices they enjoyed, were the King's Beneficiaries or Thanes. After the establishment of Christianity, they usually met to pay their duty to their prince, and to do business at the three great Christian festivals — tho' they were obliged to assemble at any other time, whenever the head of the court should see sufficient occasion to convene them<sup>a</sup>. One thing further give me leave to remark, that if this account of an

Anglo-

fenates of our German and Anglo-Saxon Generals and Kings. Dicitur etiam *Comitatus* (says *Spelman, Gloss.* p. 138.) *fenatus* imperatoris domesticus, et *judicium*, quo lites ad palatium ductas decernebat; recentioribus *Baronagium*. *Cassiodor.* lib. 4. c. 46.—*causa* legibus audiatur. Quod si illic finis negotii nequirit inveniri—nostro *Comitatui* concurrendi licentiam non negamus.

Anglo-Saxon Senate, or *Wittena-gemot* (as distinct from the *Mycel-gemot*, or general legislative assembly) be true, that then we shall find an easy explication of the preambles to the Anglo-Saxon laws, which have given much trouble and solicitude to the learned for these two last centuries, and afforded

negamus. Et l. 5. c. 15. cunctis laborantibus comitatus noster concedat justitiam.—Now that our Anglo-Saxon kings had, likewise, such a domestic senate, or curia, in their palaces, in which they always presided in person; heard and determined the causes of their subjects, both in the first and second instance, provided laws for the sanction of the great assembly, etc. is manifest, as well from the whole tenor of their history, as from the particular constitutions of Edgar and Knute, in which it is especially provided, *that no appeal should be made to the King's court, unless justice could not be first obtained in the inferior courts.* It was part, likewise, of the oath, which our Anglo-Saxon kings were wont to take upon their accession to the crown, *se judicium rectum in regno facturos, et justitiam per consilium procerum regni sui tenturos.* (vid. *LL. Ed. Conf.*) nor would it indeed be difficult to prove, that such lesser or palatine senates (if we may so call them) were common to all the kingdoms of the Gothic establishment. Now as the business, which was continually coming before this court, was considerable, the members thereof must, of consequence, be much better skilled in the laws, and customs, of their country, than the common provincial judges could be supposed to be; every person therefore, of what rank soever, was desirous, and even ready to purchase the privilege of having his business decided by them; and for this reason our kings were wont to send some of them over the country as assistants, or assessors to the Earls, etc. vid. *supra* p. 166. N. b. From this court, likewise, as so many distinct branches issuing from one common stock, were, in after times, derived the several great courts of Westminster-hall. But let us hear what *Britton*, in the person of King Edward I. says of it. En primes en droit de nous mesmes, et de nostre court, nous avons issint orde-

forded continual matter of strife and contention to our severall party writers. The Witan, (or lesser Senate, as we may call it) that is, the King, together with his Ealdormen, Thanes, Prelates, etc. drew up the law, and set their names to it, as to their act and deed ; but it was the voice  
of

dyne, que pour ceo, que nous ne suffisons maye en nostre propre persone, à oyer et terminer toutes queeles del people avaunt dit, avons party nostre charge es plusieurs parties, sicome icy est ordine. There is likewise mention made of this court in the *Black book of the Exchequer*, wrote in the time of Henry II.—Habet enim hoc commune, (*i. e.* the Exchequer) cum ipsa domini regis curia, in qua ipse in propria persona sua jura discernit, quod nec recordationis, nec sententie in eo latae licet alicui contradicere.—Of the same court, likewise, it is that *Bracton* says, Habet rex unam propriam curiam, sicut aulam regiam et justiciarios capitales, qui proprias causas regis terminant, et aliorum omnium per querelam, vel per privilegium, sive libertatem, ut si sit aliquis, qui implacitari non debeat nisi coram ipso domino rege. 'Tis probable, that the privilege here mentioned by *Bracton* of being impleaded in no other place than before the king himself, belonged especially to the members of this *Magna Curia*, as our lawyer, elsewhere, calls it, and to no others. *Fleta*, likewise, another antient lawyer, yet more fully, Habet etiam rex curiam suam, et justiciarios suos tam milites quam clericos locum suum tenentes in Anglia, coram quibus, et non alibi nisi coram semetipso et concilio suo, vel auditoribus specialibus falsa judicia et errores justiciariorum evertantur et corrigantur, ibidem etiam terminantur Brevia de Apellis et alia Brevia super actionibus criminalibus etc. vid. *Brady's Animadversions*, p. 27.—What connection or relation there may be between the power, and jurisdiction of the members of these antient curiae of our kings, and the privileges of the peers of the realm, or house of lords, as distinct from the commons, I leave to be farther considered, and examined, by such as have more leisure.

of the nation speaking in the collected body of its Landholders, which gave this deed all its force and authority : the Witan consulted, and debated upon what was most expedient for the public good ; but it was the voice of the community, which confirmed and ratified their councils : the former proposed, the latter commanded what should be done<sup>b</sup>.

65. It is unquestionable therefore, that the Mycel-Gemot was the sovereign, legislative, power of the whole kingdom. By its authority the antient customs were reformed, the old laws amended, or repealed, and new statutes enacted. Here, likewise, was the dernier resort of justice. No Tax could be levied upon any free-born member of the community without the previous approbation and consent of this great council, by whose edicts, likewise, both the proportion of the assessment, and the manner

<sup>b</sup> Thus, when the payment of tythes to the clergy was made general all over England, about the middle of the ninth century, we are told, that there were present in the council, *Fidelium infinita multitudo, qui omnes regium chirographum laudaverunt* (who all approved, or consented to the decree, which had been previously drawn up by the king and his wise-men ; whilst such as were distinguished by their titles or their nobility, namely the governors of counties, Bishops, Abbots, Thanes, etc. subscribed their

ner of the collection was determined; as might be instanced in the four general taxes of those times, Churchets, Tythes, Romeſcot, and Danegilt\*. Was the nation insulted and threatened by a foreign enemy? it was the buſineſs of the Mycel-Gemot to conſider and weigh the provocation; and, if it thought proper, to proclaim war with their injurious neighbour — were the public quarrels ſufficiently revenged, and proper reparation made to the nation? the ſame authority, that denounced war, eſtabliſhed peace likewise: nor could either any new migration, or military expedition be undertaken, but under the ſanction of a national meeting. Nor was the power of our antient parliaments (give me leave to call them by this anticipated name) confined to the civil adminiſtration only, but extended itſelf equally to all other matters, wherein the intereſt and happineſs of the com-

their names to it) *Dignitates vero ſua nomina ſubſcripſerunt*. I would obſerve one thing farther of our antient lawgivers, that upon the making any new conſtitutions, the king, as well as his ſubjects, immediately ſware to the obſervance of them.

\* See *Prynne's legal and hiſtorical vindication of the fundamental liberties, rights, and laws of England*, p. 65, etc. as likewise the *Translator's notes upon Rapin*, vol. 1. Fol. p. 120.

community was any ways concerned. It was in a general assembly of the whole nation, that the idolatry of their forefathers was first abolished, and Christianity received and established in each kingdom of the Heph-tarchy<sup>b</sup>. Here, frequently, were the Bishops appointed; or at least approved; and, like the Ealdormen and other chief officers of the state, upon a notorious breach of duty censured, and even sometimes deposed\* from their benefices—unless it may be thought, that this last branch of power peculiarly belonged to the lesser Senate. In short, the Mycel-Gemot was not only the great council of the nation in all the weightier affairs relative

<sup>b</sup> The instance, which I have now before my eyes, is of Edwin king of Northumberland; who is expressly said, *habito cum sapientibus consilio*, to have renounced his Paganism, and embraced Christianity, together with a great multitude of his subjects. *Bede, Huntingdon*, etc. but examples of this nature are too common to be particularly insisted upon.

<sup>c</sup> *Washington's Observations on the ecclesiastical jurisdiction of the kings of England*. That Bishoprics, and other ecclesiastical dignities, were in the Saxon times (commonly) confirmed in Parliament, we have the testimony of Ingulphus, 'abbot of Crowland, in William the Conqueror's time, who expressly says, "*A multis annis retro-actis nulla erat electio prelatorum more libera, et canonica; sed omnes dignitates tam Episcoporum, quam Abbatum, Regis curia pro sua complacentia conferebat.*" The *Regis curia* of Ingulph, in this place, it is most probable, means the lesser Senate, as above described. However, as to the fact itself, that Bishops, Abbots, etc. were frequently elected, approved, confirmed,

relative to peace and war, but its guard, also, and security, against all internal and domestic grievances and oppressions, it being one considerable branch of its duty (as the *Mirroir of Justices* expresses it) “to take care, that the people had no wrong done them by the king himself, his queen or their children :” for to the great council were they, likewise, as well as all the rest of the nation, in some sort, responsible for their conduct<sup>d</sup>. I own however that there is no small difficulty in determining the precise point of difference between the privileges of the greater, and the lesser, Senate, except in the essential ones of making laws and raising money

ed, and sometimes even deposed by the general assembly of the kingdom, is evident from a multitude of other instances—to this purpose is what we meet with in *Rapin's History*, vol. 1. Fol. p. 107. King Edgar being desirous of having Dunstan Archbishop, called a general council, [at Bradford in Wiltshire, says the author of the life of Dunstan] where he represented Brithelm, who had been newly elected into that See, as unqualified for so great a post ; whereupon he was ordered to return to his old diocese, [Bath] and Dunstan was chosen in his room. See *Spelman's Councils*, p. 386. 387. So *Sim. Dunelm. Ann.* 959. Beatus Dunstanus—ex respectu divino, et sapientum consilio, primas Metropolis Anglorum Primas et Patriarcha instituitur. See many more instances of this sort in *Dr. Hody's History of Convocations*, p. 27. 79. 147. 195. 202. *L'Esprit des Loix*. l. 30. c. 25. Les Fiefs se donnoient souvent dans les assemblées de la nation.

<sup>d</sup> As there is the greatest resemblance between the old *Fields of March* in France, and an Anglo-Saxon *Mycel-gemot*, the cu-

money upon the community, which always belonged to the former — Nor have I indeed been very solicitous in attempting to assign

rious reader will excuse the delay, if I farther illustrate my subject, by giving him a description of the business of the former of these assemblies, in the words of Boulainvilliers: *Mem. Historiques*, p. 46. L'on faisoit dans ces assemblées toutes sortes de Réglemens pour la police publique, lesquels, par le consentement general de la nation, y acqueroient force de loi; l'on y traitoit de toutes les affaires de l'état, de la paix, et de la guerre, et l'on y faisoit les departemens des troupes; il est remarquable à ce sujet, qu'à l'égard de la paix, les rois étoient toujours les maîtres, mais que pour la guerre il falloit le consentement de la nation, et en particulier celui des troupes, que l'on y vouloit employer: Maxime bien équitable dans son principe, puisque la guerre se faisoit toujours aux dépens de la vie et des biens du Peuple, et que, si elle produit ou du profit, ou de la gloire, l'avantage en est toujours entier pour les chefs du gouvernement — enfin c'étoit dans ces assemblées que se faisoient les promotions aux dignitez et charges vacantes, les unes de la pure autorité des rois, comme à tous les emplois de la cour; les autres par élection, soit des soldats, soit des Provinces. Car on peut assurer, qu'à l'égard des charges militaires, elles étoient toujours deférés à l'âge et à l'élection des soldats; et qu'à l'égard des provinces, il y en avoit plusieurs, à qui les rois promettoient (l. permettoient) de l'élire leur comptes, ou vicaires, sous la condition de la confirmation, qu'ils étoient obligez de demander; mais aussy, que les rois dispoient de plusieurs autres arbitrairement — There is another place, in his letters concerning the antient parliaments of France, where this author has again described the business of these general assemblies—which I shall likewise beg leave to lay before the reader, as 'tis more full than what we have just now quoted. I shall give it him in the English translation of these letters by Mr. *Forman*, Letter ii. p. 40. We see then, that during, and after, the reign of Charlemagne, the parliaments judged sovereignly the major causes, infractions of faith, revolts, felonies, attempts against the Government, conspiracies, troubles in the state: and that they judged them with regard to all ranks and conditions, without excepting the sovereign, no not even the

sign to each its separate claims of jurisdiction, it not being a matter of any great consequence, tho' I should mistake, and  
impute

the imperial dignity itself, according to the fundamental principle, that all Frenchmen were equal, and to be tried by their peers, accidental dignities not changing in the least the first character formed of being a Frenchman.—We see, *in the second place*, that those assemblies settled and determined the interior government of the Monarchy, whether in regard to imposts and duties, their rate, repartition, nature, and manner of raising them; whether in regard to the distribution of employments, giving commissions, and filling the courts of judicature. *In the third place*, we see, that those assemblies or Parliaments were admitted to all the deliberations of war, in order to settle the operations, the distributions and marches of the troops, the execution of martial law, and the observance of military discipline. *Fourthly*, we find that the power of making alliances, whether treaties of mutual assistance or guaranty, was left to the Parliament, with that likewise of judging of the sufficiency of the satisfaction exigible from the people, against whom they had declared war; that is to say, that the right of making peace, and settling the conditions of it, [I hardly know how this is to be reconciled with what I have above observed from our author in the preceding French quotation] was likewise granted to it. *Fifthly*, we see that Charlemagne would have the Parliament, according to antient custom, sovereign judge of all the differences and disputes, that might happen between the Lords and the Prelates, or between the Church and the body of the Nobility, following the primitive law. And *sixthly*, that he would have those assemblies the public tribunal, where every injured subject, suffering injustice or oppression, might find an effectual remedy against violence. — Such were the rights, which Charlemagne gave up to the assemblies of the nation, not as a new gratification, proceeding purely from his generosity, or the acknowledgment, which he thought himself obliged to make for so many services, as he had received from them; but as the restitution of an incontestible right, which had been violently usurped by his predecessors.

impute the exercise of any particular branch to the one, which really belonged to the other — seeing it cannot be questioned, but that the supreme authority resided in the Mycel-Gemot; and that all other power was originally derived from that source.

66. Tho' in Germany the *Heretoge*, or General of the public army, had been no perpetual or standing officer of the community; yet, in England, a country not thoroughly subdued, and to which our Anglo-Saxons had no other title than the sharpness of their swords, we soon find a very considerable alteration made in their antient constitution in this respect. For  
being

\* Tho' we know at what time Hengist was first called king of Kent, viz. after the battle of Aylesford, fought about five or six years after his entrance into England; yet how his countrymen, and fellow-soldiers, came so easily to assent to the innovation; whether they did not first propose it themselves, or whether there were any contests about it, we are left entirely in the dark. I am rather inclined to think, that the motion came originally from the people themselves, especially, as their general assumed it immediately upon the loss of a battle (at least after a battle, wherein he did not get the victory) that they might be like the rest of the neighbouring nations; imagining perhaps (for great was their superstition) that there was some peculiar inherent virtue in the word itself. What is certain, this was the very reason, according to their own historian *Paul Warnefrid*, why the Lombards made themselves a king to reign over them.—*Nolentes jam ultra*

being obliged to be in an almost constant state of war with the exasperated natives, it was judged more expedient for the common interest to continue the General for life, than by frequent changes, and elections, to make way for division and confusion to enter into their councils; and thereby to lay themselves more open and exposed to the attacks of an enraged and desperate enemy. — It may not, however, be improper to observe, that the new title of king, which Hengist began to assume to himself, a few years after his arrival in this country, in order to strike the greater awe into the Britons, and to give them a more formidable idea of his power; it may not, I say,

*ultra Langobardi esse sub ducebus, regem sibi ad caeterarum instar gentium statuerunt.*—This was, likewise, the very case of the Jews, who had formerly been governed, as the nations above-mentioned were, by their judges [Duces or Heretoges] “Ne-  
 “vestheloſt the people refused to obey the voice of Samuel; and  
 “they said, Nay, but there shall be a king over us; that we  
 “also may be like all the nations, and that our king may judge  
 “us, and go out before us, and fight our battles.” 1 SAM. viii.  
 19. see likewise v 5. Surely neither the Langobards, nor the  
 Jews, nor any of the other nations, who were so desirous of con-  
 ferring the title of *King* upon their Generals, had the least notion  
 of conveying away their liberties and properties with a bare  
 word; or, indeed, of conferring the least degree of power upon  
 their first magistrate, additional to what their customs had before  
 given to him; this would be to suppose them much more weak,

I say, be improper to remark, that this title, tho' it might seem to add somewhat to his authority over the conquered people and his slaves; yet that it could not, possibly, give him any accessional superiority over his own countrymen; over such as had been his voluntary associates in the common expedition. King, or Hertoge, by whatever accidental stile or title distinguished, they could look upon him in no other light, than in what their own free consent had placed him, namely, as the Captain-General of an army of free-men: and however large, on account of the dangerous and fluctuating circumstances of the times, his actual authority might be, yet was he still accountable for any tyrannous or unlawful use of his power to those, who had conferred it upon him; to those, who put themselves under his command for their own, and not their leader's sake. His subjects did not fight for pay; nor had  
Hengist

and foolish, than they appear to have been from any remains of their history, which are now extant.

Give me leave once more to quote *Boulainvil.* on this occasion. *Memoires Historiques*, p. 15. J'ai toujours été choqué de ce mécompte de nos historiens, qui, sans en excepter aucun, ont manqué à cet égard d'exactitude & de fidélité des le principe; en-  
effet,

Hengist any money to give to them ; but whatever booty was acquired in the expedition, whether land, prisoners, or moveables, all was to be proportionably divided amongst the whole army<sup>b</sup>.

67. His son, it is true, succeeded Hengist in what was called his kingdom ; as did likewise the sons of the other generals in the several states of the Heptarchy, as they were respectively conquered. But this event (consistently with the genius of our ancestors, and the form of government, which they had hitherto been accustomed to live under) we must suppose to have happened, either by the immediate election, or at least not without the express consent and solemn approbation of the Mycel-Genot of each kingdom. Gratitude towards the merits of the deceased parent ; a dread of approaching confusion, (the son already, perhaps, being at the head of the army, and having the whole strength of the

effet, c'est à ce titre le plus abusif qui puisse être imaginé, qu'il faut rapporter l'idée commune, qui fait regarder la Gaule, et à présent la France, comme le patrimoine de Clovis et de ses successeurs : on ne se souvient plus que, dans l'origine, Clovis n'étoit que le Général d'une armée libre, qui l'avoit élu pour la conduire dans des entreprises, dont la gloire et le profit devoient être communs.

Tho'

the community in his hands) their enemies continually pressing them on every side—these, or such-like prudential, reasons might the more easily induce them to acquiesce in the son's government; and patiently to submit to an innovation, which they knew not well how to remedy, without manifest hazard to the public interest. More ready to execute, than politic to contrive, it seems to have been one of the common characteristics of all these northern conquerors, to seize upon the first remedy, which offered, to free themselves from a present inconvenience, without sufficiently attending to the probable and distant consequences of it. Not but that we find the common order of succession, as it is termed, frequently broke thro', and interrupted in each of the seven kingdoms; and the Mycel-gemot (upon extraordinary occasions) exerting its antient privilege of setting aside the old, and electing new kings or generals. Instances of this sort are frequent throughout the whole Heptarchy; not in Northumberland only; that kingdom of continual tumult, sedition, and confusion; but even in Wessex  
the

\* Tho' the crown of England was undoubtedly elective after

the best regulated and most powerful state of them all—where it is evident, from what still remains of their history, that the authority of the general assembly was so great, as to depose their queen Eadburga, and by an express law to enact, that the wives of their kings should no more have the appellation of queens given to them, nor be suffered to have a seat or throne near their husbands. We find likewise the same sovereign power displaying itself in the deposition of *Sigebert*, another of their princes, and in the election of *Adelard* and *Kemulph* to the throne; and even *Egbert* himself, in whose person all the seven states were at last united, undoubtedly, had no other right, or title, to the kingdom which he enjoyed, than what the free choice and recognition of the general assembly of Wessex gave to him—and many other examples of this nature might be produced, was there any occasion for it, even after the union of the Heptarchy, when it seems to be agreed on all hands, that the crown was, in a sort, elective.

68. So that, tho' each particular state  
of

the union of the seven kingdoms, yet must it be owned, that the

of the Heptarchy before the union, and the whole kingdom after it, might be, and frequently was stiled (by the latin writers of our earliest history) an *Inheritance*; yet was it an *Inheritance*, not of absolute right descending to the eldest son, or to the next suc-

kings were always taken from the royal family. What therefore *Mexeray* observes concerning the kings of France of the first race [and it might be added of the second] is equally applicable to our own Anglo-Saxon kings, especially after the union—There seem to have been three previous qualifications required to entitle a man to be elected, either King of France, or England, in those times. 1. Royal birth, (tho' whether he was born in wedlock, or not, seems not to have been much regarded.) 2. The last will of the father, or antecessor. 3. The consent of the states of the kingdom. Vid. *L'Esprit des Loix*. liv. 31. ch. xvii.—In proof of what I have asserted in other parts of this section, see *Prynne's legal and historical Vindication*, p. 54—57. *Tyrrel's introduction* to his history, p. 40. see likewise *Geddes's introduction to his view of two Castilian Cortes*, *Miscellan.* vol. 1. p. 322. “These accounts, says he, tho' short and imperfect, yet are sufficient to satisfy any person, of the antient Spanish Cortes having been the same with the English parliament, and with the assembly of the states in France: the northern nations, which pulled down the Roman empire, having all had the same form of government, which was a mixt monarchy, as well as before their crowns became hereditary; which the Gothic Spanish crown was not for some hundreds of years after the Goths had settled in Spain.” Quando il regno (says *Birago*, speaking of the power of a Portuguese Cortes, in his *history of the separation of the kingdom of Portugal from that of Castile in Phil. IV time* p. 127.) Quando il regno si unisce nelle corti, l'autorità di esso è tremenda, potendo ogni stato, anzi ogni interveniente, dire liberamente la sua ragione per nome del regno, dipendendo l'istessa regia autorità dalle determinazione delle corti.—And agreeably hereto we have an arret of the Cortes themselves published in the year 1640-41, in which are these words, (*Birago*, p. 286.) E supponendo per cosa chiara *in jure*, ch' al regno

successor; but, as Alfred the great very justly expresses it, it was an *inheritance*, which he owed to the grace of God, to the goodness of his great men, and to the consent and approbation of the elders of the people. — Tho', therefore, in answer to what

regno, et alli trè stati d' esso compete il giudicare et dischiare la legittima successione del medesimo regno, ognà volta che nasce qualche difficoltà et dubbio trà i pretendenti, per difetto di discendenza dell' ultimo Rè possessore, et anco per effimersi, quando occorra, dalla soggettione et dominio delli Rè, che per occasione di loro mal governo si rendono incapaci di regnare. *Ritenendo questo potere il regno fin dal tempo, che li popoli lo trasferiròno al primo Rè, che li governasse.*—See likewise the twelfth canon of the Synod or council of Northumberland held in the time of Offa; and the acts of the council of Calcuith.

\* See the *Testament of Alfred* in the appendix to *Spelman's* life of that prince; the words, which I particularly allude to, are, in the original, *Haereditas, quam Deus ac principes cum senioribus populi benigne ac misericorditer dederunt*. The beginning of the will runs thus: Ego Aelfredus divino munere, labore ac studio Athelredi archiepiscopi, nec non totius West-Saxoniae nobilitatis consensu pariter et assensu, occidentalium Saxonum rex, etc. That Alfred had no hereditary-title to the throne, must be allowed on all hands, as there were many sons of his elder brothers alive at the time of his accession—and yet we see he calls the kingdom an *Inheritance*. *Sim. Dunelm.* therefore *An. 871.* speaking of this great prince's coming to the throne, says, *substracto ab hoc saeculo rege praedicto [Ethelredo scil.] mox Elfredus a ducibus et praefulis totius gentis eligitur, et non solum ab ipsis, verum etiam ab omni populo adoratur—ut eis praeflet—* that is, he was elected by the senate, and afterwards approved and confirmed by the Mycel-gemot, or general assembly of the whole people. Almost in the same terms king John, in the Anglo-Norman times, tells us in one of his charters, that he possessed the crown *jure haereditario, mediante tam cleri quam populi unanimi consensu*. See *L'Esprit des Loix*, liv. xxxi. ch. 17. It is, therefore, very well observed by *Tyrrel*, (*Introd. p. 53.*) that it

what has been here advanced, it has been pretended, that some of these Anglo-Saxon princes disposed of their kingdoms by their last will and testament; and that this fact alone is sufficient to prove that they looked upon themselves as absolute lords, and masters; of it; yet am I of opinion that this argument, however plausible an appearance it may seem to carry with it, will not bear the great weight, which has been laid upon it. When, indeed, the king had behaved himself well in the execution of his important office; and had thereby engaged the love and veneration of his people, in such a case, his good subjects, in return, would be ready and willing to pay all due deference and respect, to what they regarded as the last, and dying, requests of their

is a manifest error in some of our modern writers of the succession, who will needs understand these words, *Jus hereditarium*, to have been used in the same sense in those, as they have been taken in later ages, since the crown came to be claimed by a lineal descent of blood. But indeed Eadmerus's sense of these words is most agreeable to the civil law, wherein he is called *Haeres ex affe*, who comes in as heir by testament to the whole inheritance, tho' no way related to the testator: for that law describes an heir thus, *Haeredis significatione, omnes significari successores, etsi verbis non expressi*: and therefore our Bracton derives the word *Haeres*, ab *haereditamento*; for, says he, *Inheritance* is a *succession* to all the right, which the predecessor (he does

their wise and great benefactor. But thus much, I think, I may venture to affirm, as entirely attested by the voice of ancient history, that such last will was never regarded as valid, or of any binding authority to the kingdom, unless it had been previously read unto, and had received the sanction of the Mycel-gemot, or, at least, of the Wittena-gemot: and, accordingly, we are expressly told by King Alfred himself, that both he, as well as his father before him, had recited their last testaments to a general assembly of their people; well knowing, that however they might dispose of the kingdom, their wills could never be put in execution, unless they constituted the whole nation trustees, as it were, or executors of it<sup>b</sup>.

## 69. I

does not say ancestor) enjoyed—from whence you may observe, that, in Bracton's time, this word *Haeres* was not, even by our law, limited only to an heir by blood or descent.

<sup>b</sup> So likewise in France, even Charlemagne himself, the greatest of all their princes, clearly acknowledged the sovereign right of parliaments with regard to the disposal of the crown; in that he would not venture to declare his son Lewis his heir, or to associate him as his partner in the kingdom, without the concurrence or approbation of his parliament. On account of this transaction the author, I have so often quoted on these occasions, in his third letter (p. 73. of the translation) breaks out into these exclamations: “Behold another parliament, which,

69. I am not ignorant, that it has been frequently asserted by those, whose slavish principles force them to catch hold of every appearance of an argument in support of a cause, which they have too hastily engaged in—that there could not be any free-men, properly so called, amongst our old Anglo-Saxons; for that they all held their estates of, and from, the King alone, (the fountain of liberty and property, as well as of honour) who originally parcelled out, and divided the conquered land amongst his followers, in what portions, and upon what conditions he thought fit. — But this objection, give me leave to reply, has no other foundation for its support, than a partial knowledge, or utter ignorance rather, of our history, and the antient constitution of our government. It was, indeed, one considerable part of the General's, or King's, office, to divide the spoil taken in war amongst those soldiers, who had bravely ventured their lives for it; but let it be remembered,

as to right, was acknowledged arbiter of the crown even by Charlemagne himself! It is certain nevertheless, that the right of Lewis was not without its difficulties; because there was a son of his elder brother living, a prince of great hopes, who was the

ir

membered, that this division was always to be made with the advice and assistance of the other leaders and superior officers of the expedition; that the supreme commander was not left at liberty to proceed in this matter, as he pleased, but that the inviolable customs of his country obliged him to pay a proper regard to each man's claim, as it was founded in his necessities, or in his own, or the merit of his family. Instances, in proof of this assertion, are every where to be met with in the annals of these northern conquerors. So that the subduer of Gaul, even the powerful Clovis, could not so much as dispose of a silver cup by his own authority, without the consent of the foldier to whose share it had fallen, upon dividing the spoil after a battle.

70. If, therefore, the King had the chief hand in apportioning the conquered country, as the power which he was in possession of, makes it not improbable that he had—it was not as this land was his own estate

a possession of Italy, in which throne he had succeeded his father; and, I believe, I may advance, that nothing less than the unanimous consent of a general parliament could strip him of the right of eldership."—Vid. *L'Esprit des Loix*, liv. xxxi. ch. 17.

estate or property, (for most unquestionably it was not) but as vested in, and belonging to, the public, in general, of which he at that time happened to be the head. The meanest native Anglo-Saxon free-man, who hazarded his life with Hengist in the expedition into Britain, had as equitable a right to a proportion of what he had helped to conquer, as Hengist himself had; and whatever might be the portion assigned him upon a division, (whether greater or lesser) he enjoyed it as absolutely free from all tax, service, and incumbrance whatever, as the General himself did his own demesnes; and had, moreover, a power of doing with it, what he pleased, either of selling, giving it away, or of disposing of it by will, as is evident from many of our old Anglo-Saxon charters still extant\*.—But as this is a point of no small consequence, we will examine it more particularly. From whence then, or upon what occasion, and upon what pretence could

\* See frequent instances of this produced in *Spelman's Remains. Boulainvill. Mem. Historiques*, p. 24. Si le François [so, if the Anglo-Saxon] étoit essentiellement un homme libre, maître de sa personne, et de ses biens—le partage des terres ne devoit pas

could the old Anglo-Saxon Heretoges derive an authority to impose any burdensome conditions upon those persons, who had voluntarily put themselves under their conduct, and were in all respects their equals, excepting only the temporary authority, which they themselves had conferred upon them, of leading them against the common enemy? can it be imagined, that these fierce and free-born conquerors, when they appointed themselves a General to command the public armies, at the same time blindly and unconstrainedly resigned their liberties, and properties, to his arbitrary disposal? or would our brave ancestors have been so willing to leave their native country, where they enjoyed their political freedom in perfection, that immediately after having undergone all the dangers and fatigues of a long and bloody war, they should tamely submit to become hewers of wood and drawers of water to their own countryman, to the person, whom

pas détruire cette liberté, puisque au contraire il en rehaussoit l'éclat, en soumettant un certain nombre d'hommes [meaning the conquered Gauls] à chaque particulier François.

- whom their own hands had raised ; and who had neither army to support his pretensions, but what consisted of the people, whom he is imagined to have enslaved, nor revenue sufficient to maintain himself, (much less a body of mercenaries) but what the free consent of his subjects was pleased to allot him ? the very supposition, upon a little reflection, will be found as utterly subversive of common sense and reason, as it is entirely contradictory to all antient history. For as to all that tedious and disagreeable train of feudal services, (as they were afterwards called) which are so much insisted upon in the present question, these were introduced by slow and almost insensible degrees, and, as has been shewed above, were absolutely unknown in the early times, we are now treating of<sup>b</sup>.

71. "A

<sup>b</sup> En effet (says *Boulainvill. Mem. Historiques*, p. 16.) pourroit on croire, que le François, [or the Anglo-Saxon] né libre, et souverainement jaloux de cette qualité, n'auroit employé son sang et ses travaux pour faire une conquête, qu'afin de se donner un maître au lieu d'un roi, et n'auroit pensé à faire des esclaves, que pour le devenir lui-même. So again, to the same purpose, p. 179. Dans le premier état [upon the conquest of Gaul, under the first race of their kings] J'ai fait voir qu'une nation entiere qui s'est déterminée à changer le pais de sa naissance, et à faire une conquête, au risque de se perdre elle-même, n'a jamais pu considérer l'établissement personnel de son Roi, comme son ob-

jet

71. "A Conqueror, even in a lawful  
 "war," as an excellent author has justly  
 observed<sup>a</sup>, "gets no power by conquest o-  
 "ver those that conquered with him.  
 "They that fought on his side cannot suf-  
 "fer by the conquest, but must, at least,  
 "be as much freemen as they were before.  
 "—And most commonly they serve upon  
 "terms, and on condition to share with  
 "their leader, and enjoy a part of the spoil,  
 "and other advantages, that attend the  
 "conquering sword; or at least, to have a  
 "part of the subdued country bestowed  
 "upon them. And the conquering peo-  
 "ple are not, I hope, to become slaves by  
 "conquest, and wear their laurels only to  
 "shew they are sacrifices to their leaders  
 "triumph." Let us not mistake therefore;  
 there is not the least foundation either in  
 the

jet principal; il est vrai néanmoins, que le succès d'une telle en-  
 treprise n'a pû lui devenir favorable, sans que le Roi en ait le  
 profit principal, outre la gloire de la conduite; mais que la na-  
 tion ait renoncé, ou même qu'elle pût renoncer à son droit sur les  
 terres, qu'elle s'est acquise, et qu'elle à partagées, dans la seule  
 idée de donner à ce Roi, ou à ses successeurs, un pouvoir illimi-  
 té, dont il ne lui reviendrait d'autre avantage que la gloire d'o-  
 béir, c'est non seulement ce qui n'a pas été fait, mais qu'il étoit  
 impossible de faire, ou d'imaginer etc.

<sup>a</sup> *Mr. Locke in his Essay upon Government.*

the nature of the thing itself, or in fact, to suppose that the Anglo-Saxons, upon their conquest of Britain, possessed their estates, subject to such arbitrary terms or conditions, as their Generals or Kings might think fit to impose upon them—The only service, or incumbrance, to which their lands in those days were liable, (if, indeed, what was absolutely necessary to the common safety can properly be stiled an incumbrance) was the *trinodis necessitas*, as it was termed by the later writers of their history, or the necessity of attending personally in all defensive wars, wherein the preservation of the whole community was concerned; and of contributing towards the expence of building, repairing and defending the public bridges and castles, as often as occasion required. But if this must needs be looked upon as a mark of the

\* In old charters the *trinodis necessitas* is sometimes spoken of under the general terms of being *omnibus hominibus communis*—the Saxons therefore did not call these necessary duties *services*, or look upon them, as regarding the person of the owner; but they termed them *Landirehta*, rights that charged the very land itself, whoever possessed it, whether churchman or layman. And these duties were ordinarily excepted in every charter, not for fear, lest they might be otherwise extinguished, but *per superabundantem cautelam*, lest the general words preceding should be taken

the Anglo-Saxon vassalage, or servitude, it was certainly such an one, as was common to all the land of the kingdom, in general. Neither the crown-lands, nor even those of the church, tho' given in pure charity, were exempted from these necessary services; they were due to the community for that protection, which each person was supposed to receive from it; they were due to their common convenience, safety, and defence, and not to the king, as such<sup>b</sup>.

72. If it should be said, that the Anglo-Saxons, instead of holding their estates of the king, really held them of the kingdom, tho' I can see no necessity for using the expression, as every man at this day holds his estate subject to such laws and restrictions, as the kingdom, or legislative power, shall from time to time lay upon him; yet I must own that there is some ground, in fact,

taken to involve them, and to release that, which the king could not release. For tho' Ethelbald, (an. 719) in his charter to the monks of Croyland, did give the site of that monastery, with the appendages etc. *libera et soluta ab omni onere seculari in perpetuam eleemosynam*—yet in his charter of privileges granted to all the churches and monasteries of his kingdom, viz. Mercia, speaking of the repairing castles and bridges etc. he confesseth and sayeth, that *nulli unquam relaxari possunt*. *Spelman's Remains*, p. 22.

fact, for the distinction\*. For we may clearly observe in many of their antient laws still extant, (not to mention other instances from whence the same conclusion may be drawn) a manifest difference made between treason against the king, and treason against the kingdom—the latter in England, as well as, heretofore, in Germany, being always punished with death, and a forfeiture of the whole estate to the community, the former only with a large pecuniary mulct. Nay, whoever in those early ages of freedom, independence, and mutual equality, dared even to lay in wait for, and to kill, the king, was under little apprehension of suffering death for so atrocious a crime, if he was able to pay the Weregild, or that valuation in money (or cattle) which the laws had fixed upon every man's life, from

\* In France this distinction is as antient as any charters, which are extant—where the kings, in their laws and ordonnances directed to their subjects, always address them in this manner, *Regni fidelibus*—C'est à dire (as *Boulainvill.* observes, *M. H.* p. 16 et 17.) Fidèles à l'État, et au gouvernement François : où ils n'appliquent pas la fidélité des Leudes à leur person, mais à l'état. so likewise in the explication of the famous *Julia lex*, which we meet with in the Institutes, the same distinction is taken notice of: *Lex Julia majestatis, quae in eos, qui contra Imperatorem, vel Rempublicam, aliquid moliti sunt, suum vigorem extendit.*

See *LL. Alfredi* 4. tit. *De proditione Domini.*

from the highest to the lowest'. But farther, the very oath of fidelity, which our Anglo-Saxons took to their princes, was plainly subservient to that prior and superior duty and obedience, which they were all supposed to owe to the kingdom, or community. The words of it, as they are still preserved in the common copy of Edward the Confessor's laws, run thus in English, "all the people in their Folc-mote  
 " shall confederate themselves as sworn  
 " brethren, to defend the kingdom against  
 " strangers and enemies, together with  
 " their lord the King; and to preserve  
 " his lands and honours, together with  
 " him, with all faithfulness'.

73. What then, may it be pertinently asked, were the King's peculiar prerogatives, and wherein did the royal power chiefly

\* See the constitutions themselves in Dr. *Wilkins's* collection. —I am not much concerned about the genuineness of these Laws of Edward the Confessor. For tho' there be good reason to conclude, that the translator of them lived some years after the time of this prince; and tho' it must be allowed that he has inserted some things, which could not have been enacted by the Anglo-Saxon princes; yet can there be no doubt made, but that he followed the original exact enough in the main, and especially in this oath; which he could never have invented under a Norman Prince, had he not had a copy of it before him. As the Norman Barons, as well as the English, were ever calling for Edward's laws,

chiefly consist? It is extremely difficult, at so great a distance of time, and as there are so few authentic monuments of those ages remaining, to be very accurate and precise in the determination of this material point. We may, however, venture to assert, that he was Captain General of the armies of the nation, during the course of any wars which it chanced to be engaged in, whether offensive or defensive; and that upon these occasions his authority was much greater than ordinary\*. It was, likewise, a necessary branch of the trust reposed in him to divide the spoils, and to portion out the conquered lands amongst his soldiers and servants; not, indeed, according to his own arbitrary will and fancy, but, as we have already seen, agreeably to the advice of his Thanes, to the strictest rules of justice, and to the antient customs of his country. As the Freeholders of each county,

laws, there is no question, but there must have been so many transcripts of them extant in those days, that it would have been impossible for any man to forge entirely new ones, had there been a temptation.

\* To this purpose *Adam Bremensis*, as I find him quoted by *Muratori*, observes concerning the antient Swedes, *Reges habent ex genere antiquos. Quorum tamen vis pendet in populi sententia.*

county, city, or castle, always marched to battle under the immediate command of their own Earl, Count, or Castellan; so the King was ever at the head of his Thanes, as their particular leader or captain. He was, likewise, most commonly present in his own court, or the lesser senate, whenever it met upon business. In recompence for his superior cares, and trouble, he was rewarded with a larger share of such new acquisitions as were made, and his whole army, at least after the introduction of Christianity, was sworn to defend his person against all attacks whatever. As the principal pilot of the community, his office consisted in conveying the commonwealth safely thro' the midst of storms and tempests; for in the calmer, and more quiet seasons of peace and serenity, it does not appear, that there was a much greater power lodged in him, than  
in

sententia. Quod in commune laudaverint omnes, illum confirmare oportet: nisi ejus decretum potius videatur, quod aliquantulo sequuntur inviti. Itaque domi pares esse gaudent; in prae-  
 ium euntes omnem praebent obedientiam regi, vel ei, qui duc-  
 or ceteris a rege praeficitur.—Our Anglo-Saxons, likewise,  
 em to have had just such a ductor, or deputy generalissimo of  
 ne King's appointment, as this author here alludes to; they  
 called

in the common governors of the counties. He moreover convened the Mycel-gemot upon all extraordinary occasions (for it usually met of itself, either in the spring, or at some other fixed time): he presided likewise in the great assembly, and proposed, perhaps, the subject of their future debate; he maintained order and decency in the national councils; gathered the votes; pronounced the determination, and was afterwards entrusted with the execution of it.

He

called him, in their own language, *Cynings-hold*, and he is stiled by Alfred in his testament, *Princeps meae militiae*. *Cluver. Germ. antiq.* p. 318. *Principes Germanorum*, five reges, solo nomine tantum reges fuere: re autem ipsa ἀρχὴν eorum nihil aliud fuit, quam ὀργάνηα διὰ βίης, five ὀργάνηα αὐδίας, ut tradit de Lacedæmoniorum regibus *Aristoteles*, *Pol.* l. iii. c. 13.

• The office of an English King is thus described in the laws, which go under the name of Edward the confessor; (p. 200 *Ed. Wilkins*) Rex, qui est vicarius summi regis, ad hæc est constitutus, ut regnum terrenum, et populum domini, et super omnia sanctam veneretur ecclesiam ejus, et regat, et ab injuriis defendat, et maleficos ab ea evellet et destruat, et penitus disperdat. Quod nisi fecerit, nec nomen regis in eo constabit, verum, testante Papa Johanne, nomen regis perdit. — Tho' monarchical government was unquestionably the most antient of any, yet was the power of the prince very small in the early ages of the world, in comparison with what it is at present; it would not be difficult perhaps to trace its encrease, and progress with the course of the vices, as well as of the knowledge of mankind. The wickedness and disorders of the subject necessarily threw more power into the hands of the governor. For government and laws were invented, not to be a check or restraint upon the liberty, but upon the licentiousness, or viciousness of mankind — but this speculation would divert us too far from the original intention

He had the honour, likewise, of setting his name first to all acts of state, which (as he was to see them performed) were always published in his name; and enjoyed, perhaps, some few other prerogatives besides these—but we may certainly conclude, that they could not have been considerable in this early period of our constitution, and therefore it is hardly worth our pains to endeavour to be more accurate in describing them<sup>b</sup>.

## 74. The

tion of this Essay. One method, however, of evincing, that I have not too much diminished the power of our antient kings, is not only to compare it carefully with our own history, but likewise with the kingly power, as formerly exercised, in almost all other nations of the world.—We shall find, nearly, the same limitations, every where taking place in all the kingdoms of the northern, western, and southern parts of the world. Hear what *Grotius* has observed of the Lacedemonian state, and see how exactly it corresponds with this of the Anglo Saxons, as well as with that of his own country; *Quod si et externum exemplum quaeritur, nusquam similis quam in Laconum republica invenio; quae et Platonis, Pólybii, et sapientum multorum, ipsius quoque Apollinis, ut creditur, testimonio prae ceteris laudata est. In hac enim, reges quidem succedebant alter alteri sanguinis ordine, ita ut pro pueris regibus tutores, quos Prodicos vocabant, fiduciario imperio fungerentur. Sed Reges ad imperium non admittebantur, nisi prius ex patriis legibus se imperatores jurassent. Eratque regibus potestas in singulos; in reges Ephoris, et senatui. Grotius de Rep. Batav. Antiq. p. 82.* Nor must I omit what the famous Bishop of Meaux has observed of the antient kingly state of Rome, in the book which he wrote for the instruction of the Dauphin. Au reste, quoique Rome fût née sous un gouvernement royal, elle avoit même sous ses rois une liberté, qui ne convient guères à une monarchie réglée. Car outre que  
les

74. The King's prerogatives, I say, could not be very great during the Anglo-Saxon ages of our government, inasmuch as it is certain, "that he had no sovereign power at all to make, alter, [suspend] or repeal laws; impose taxes; or alien his crown lands, but only by common consent in general parliamentary councils; much less to imprison, condemn, exile, outlaw any man's person, or to deprive him of his life, lands, goods, franchises, against law, and without any legal trial." He could neither enhance, nor debase, the coin of the land without the consent of the Mycel-gemot; and as to the power of pardoning offenders against the laws

les rois étoient électifs, et que l'élection s'en faisoit par tout le peuple, c'étoit encore au peuple assemblé à confirmer les lois, et à résoudre la paix, ou la guerre. — Ainsi les rois n'avoient proprement que le commandement des armées, et l'autorité de convoquer les assemblées legitimes, d'y proposer les affaires, de maintenir les loix, et d'exécuter les decrets publics. So *Machiavel in his discourses upon Livy* l. 1. c. 9. Et chi considera bene l'autorità che Romulo si riservò, vedrà non se ne essere riserbata alcuna altra, che comandare alli eserciti quando si era deliberata la guerra, et di ragunare il senato.—*The Florentine*, indeed, brings this as an instance of the political modesty of the founder of the Roman state; but I rather think it owing to the models, which all the neighbouring states yielded him. He could not think of assuming a larger power than other princes enjoyed; nor would his voluntary associates, or subjects have suffered such an insolent

laws and customs of his country, I cannot recollect any one instance of it—nor, indeed, could our Kings, at this time, even think of exercising such a power, as a certain portion of the mulcts imposed for murder, and most other offences, were appropriated to the emolument of the injured person, or his relations. The most considerable branch of the royal office as well as power was the appointing the great officers of the state and church, namely, the governors of counties<sup>b</sup>, the Archbishops, Bishops, and Abbots, and nominating to the vacant Benefices or Fees—This was the chief support of the regal authority; this was what gave it all its influence, and without which  
it

insolent attempt in their new monarch. For that Romulus was, in his own nature, ambitious enough, is evident, (notwithstanding all that Machiavel offers in his defence) both from the murder of his brother, and of his Sabine partner, Tatius. See, moreover, the *Leges Imperii* mentioned by *Grotius* in his treatise of the antiquity of the Batavian government, p. 71. For it cannot be doubted, but that the same restraints, or very nearly like them, were imposed upon all the kings descended from our German nations, as were upon the old counts of Holland: the mere name of King making but little difference in these matters.

\* See *Prynne's legal, and historical, Vindication* etc. p. 49. etc. Where he has attempted to make out each of these particulars from our antient history, and, I think, with success. See likewise *Tyrrel's Introduction*, etc.

<sup>b</sup> See *Saxon Annals*, 694.

P

§ *Tyrrel's*

it must, in times of peace, have dwindled into nothing: but how far the Mycel-gemot, or the lesser Senate, ordinarily shared this power with him, has been before remarked. The revenues of the sovereign, like those of the great men of his kingdom, were made up chiefly of the produce of his own estate, namely, of that large share of the conquered land, which upon the first or any subsequent division fell to him, amongst the rest of his brethren, as an individual or member of the community—part of which

\* *Tyrrel's Introduction*, p. 69. Nor can I here omit, that the English-Saxon Kings wanted one great prerogative, which ours exercise at this day, viz. the power of granting away the Demesnes of the crown, even to pious uses, without the consent of the great council of their kingdoms: and of this we find a remarkable instance in Sir Henry Spelman's first vol. of councils, where Baldred king of Kent had given the Manor of Mallings to Christ-Church in Canterbury; but, because the chief men of his kingdom had not consented to it, it was revoked; tho' King Egbert, afterwards, by consent of his Mycel-gemot, made a new grant thereof—*Prynne*, as above p. 51. will furnish us with other instances of this sort.—It was upon the strength of this evidence, that in the account of the King's revenue, I have supposed him to have an estate of private inheritance distinct from the lands annexed to the crown, that is, from those lands which usually went with the generalship or kingdom itself: otherwise, the king would in some respects be in a worse condition than the rest of the people; for they certainly might alienate their estates, as they pleased, whereas, on supposition that the king had only the crown-lands as we should now call them, he could not. Besides, when Hengist first divided Kent, upon the cession of Vortigern, he could not have had any expectation of devolving his power to his son; there

which land was kept in his own hands and the product received in kind, another part was let out for services and rent, and a third part set at a fee farm, or at a certain sum of money to be paid yearly.—But besides this, towards the better support of the superior station which had been conferred upon him, a certain proportion of the fines, which were imposed in those days for almost all crimes, which could be committed, was allotted to his use.—These seem to have been the principal branches of the King's revenue, and the only means, which

there is no question, therefore, but he had a certain portion of land set apart for himself and family; tho' the tumults, which followed, gave him an opportunity of settling the kingdom itself upon his descendants. 'Tis probable, therefore, that, in all the subsequent conquests made upon the poor Britons, there were two parts set aside for their supreme officer, one as he was King, another as he was a member of the community, and like the rest of his brethren, had a family and posterity to provide for.—As to the power of giving or conferring titles upon the members of the state, this, likewise, was unknown in the early ages of the Saxon empire. Ealdorman seems to have been the first, and indeed, the common title of all officers whatever, both high and low. A title very agreeable to, and, accordingly, first assumed from that age and experience, which alone could recommend to places of trust, and command in those days.

Non omnia grandior ætas  
Quæ fugiamus habet; seris venit usus ab annis.

see *Spelm. Gloss.* ALDERMANNUS. To divide the title from the office was an invention of later times, to create dependancies, and seems to have been first practised about the latter end of the Anglo-Saxon period. For we have reason to think, that,

which he had of maintaining the dignity of his character : for as to the payment of the army which he commanded, this did not belong to him—every native freeman at that time serving his country without hire, or the expectation of any other reward, than a just share of the booty, which might be acquired. If therefore it be a maxim grounded upon the reason of the thing itself, and agreeable to the experience of all ages, that power results from, and always follows property—we have the most convincing argument before us, that the power of our old Anglo-Saxon Kings could not possibly have been very great, as their income was inconsiderable, and but just sufficient to maintain their own households.—I know not whether it may not be proper to remark, as an additional instance of the consistent wisdom and policy of our ancestors, that, as during the continuance of the Heptarchy the particular members of each kingdom were

about that time, there were some merely titular Thanes, as well as Ealdormen.—As to the term *Lord*, this came in with the Danes, and was common, at first, to every master of a family, that is, to every one who gave bread and other provisions to his servants and dependants, for that is the true import of the word.—There are instances, indeed, of the making of knights  
in

were wont to meet together in their Mycel-gemots, to consult and provide for the welfare of their respective states : so, in like manner, there are numerous instances to be found of a still larger, and more comprehensive assembly, a *Pananglicum* as we may call it, or general convention of all the seven kingdoms meeting together, and advising with each other upon great and extraordinary emergencies. Here then the whole nation was united into one society, and rendered, as it were, one state, and one uniform body—here the common concerns of the whole Anglo-Saxon people, both civil and religious, were debated and transacted ; and here, likewise, according to antient custom, was the monarch, as he is usually called, or commander in chief of the united armies of the whole confederacy, elected : for that such a supreme officer there was in England, as there formerly had been in Germany, almost

in the Anglo-Saxon times; but this was not the particular privilege or office of the king, but of the superior clergy, the abbots and bishops. Even as low down as the Norman times, we read of William Rufus being made a knight by the archbishop of Canterbury, according to the antient custom. See *Hodg's History of Convocations*. p. 162.

most every page of our old history evinces\*.

75. Now as to the constituent members of this universal council of the whole Anglo-Saxon nation, there is little room to question, but that they were the same with those, who composed the Mycel-gemots of each particular kingdom of the Heptarchy; tho', perhaps, for the sake of private conveniency, deputies might be sometimes allowed, or representatives, chosen by the landholders for this purpose. For can any probable reason be assigned, why we should suppose a difference between these general assemblies in this single respect, when we find them, in fact, so much alike in all others? What therefore the county-meetings of each particular kingdom were to its Mycel-gemots, the same relation did these

\* Vid. *Seldeni analect. Anglo-Britan.* p. 918. Ed. Wilkins. Conspicuum in isto septenario plerumque fuit unitatis dominium, — Quorum unusquisque, prerogativae quasi nota, titulo regis gentis Anglorum insigniebatur. I shall present the reader with a series of these Anglo-Saxon monarchs, according to the time of their election, as near as it can be fixed with any tolerable degree of certainty. See *Rapin's History*, Vol. 1. Fol.

A.D.

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|----|------|----------|--|---------|
| 1. | 449. | Hengist, | King of Kent.  |         |
| 2. | 492. | Ella,    | King of Suffex.  |         |
| 3. | 508. | Cerdic,  | King of Wessex: he was elected monarch some years before he assumed the title of King of Wessex. |         |
| 4. |      | Cenric,  | King of Wessex.  |         |
| 5. | 560. | Ceaulin, | King of Wessex,  | 6. 593. |

these latter bear to this general convention of the whole people: like different stories of the same edifice, however they might vary from each other in their height, or in some other accidental circumstances; yet were they all built upon the same common foundation, namely, the mutual independence and equality of every native freeman of the whole community. The supreme power was ever lodged in the collective body of the free proprietors of land; and tho' they might sometimes please to part with it for a time, where the common interest so required, yet did it ever devolve to them again in the dernier resort.—And with respect to the Monarch himself, or head of the confederacy, as he may be called, it cannot reasonably be imagined, that

- |     |      |            |  |
|-----|------|------------|--|
| 6.  | 593. | Ethelbert, | King of Kent.  |
| 7.  | 599. | Redowald,  | King of East-Anglia.   |
| 8.  | 624. | Edwin,     | King of Northumberland.  |
| 9.  | 634. | Oswald,    | King of Northumberland.  |
| 10. | 656. | Osway,     | King of Northumberland; after it had<br>been vacant ten years. |
| 11. | 670. | Egfrid,    | King of Northumberland.  |
| 12. | 686. | Cedwalla,  | King of Wessex.  |
| 13. |      | Ina,       | King of Wessex.  |
| 14. |      | Ethelbald, | King of Mercia.  |
| 15. | 757. | Offa,      | King of Mercia.  |
| 16. | 796. | Egfrid,    | King of Mercia.  |
| 17. | 796. | Cenulph,   | King of Mercia.  |
| 18. | 819. | Egbert,    | King of Wessex.  |

that his authority, or peculiar privileges were originally greater, with regard to what was due to him from the whole nation, than those of each particular prince were in that state, over which he was appointed to preside. He was Generalissimo, or commander in chief of the united armies of the whole people, and ordinarily presided in that great and universal assembly, which we have just been taking notice of, as often as it was thought necessary to call the seven kingdoms together. It was the still-growing ambition of these monarchs, and their labouring to assume more power, than they were warranted by the antient customs and laws of their country, which became the fertile occasion of those almost-continual civil wars, which raged amongst the several kingdoms of the Heptarchy. There is something so strangely intoxicating in the possession of large power, that even the wisest men are hardly sufficient to exercise it in such a manner as that it may neither injure themselves, nor be prejudicial to the due rights of other people.

76. I had no intention, when I first began this enquiry into the Anglo-Saxon

on government in England, to take the least notice of our antient ecclesiastical polity ; but finding the plan of it already drawn up with great accuracy and judgment, as well as conciseness, by the very learned Knight, whose works I have so often had occasion to mention, I don't doubt but the curious reader will easily excuse the interruption, if I here transcribe it for his perusal, especially as it bears so exact a resemblance to the civil constitution. " The *E-*  
 " *state ecclesiastical* was first divided into  
 " provinces ; every province into many  
 " Bishopricks ; every Bishoprick into ma-  
 " ny Arch-deaconries ; every Arch-dea-  
 " conry into divers Deanries ; every Dean-  
 " ry into many Parishes. And all these  
 " committed to their several Governors,  
 " Parsons, Deans, Arch-deacons, Bishops,  
 " and Arch-bishops, who, as subordinate  
 " one to another, did not only execute  
 " the charge of these their several por-  
 " tions, but were accomptant also for the  
 " same to their superiors. — The *Par-*  
 " *son*, as *ima species*, was to hear and de-  
 " termine the breaches of God's peace, of  
 " love and charity, within his parish ; to  
 " reprove

“ reprove the inordinate life of his Pa-  
 “ rishioners; and tho’ he could not strike  
 “ with the ecclesiastical sword, yet might  
 “ he shake it against them, by enjoining  
 “ notorious offenders to contrition, re-  
 “ pentance, satisfaction; and sometime,  
 “ by removing them from the blessed sa-  
 “ crament.—The [rural] *Dean* was to  
 “ take cognizance of the life and conver-  
 “ sation of the Parsons and Clergymen of  
 “ every parish within his Deanry; to cen-  
 “ sure breach of church-peace; and to  
 “ punish incontinent and infamous livers  
 “ by excommunication, penance, etc.  
 “ And because there could be no breach  
 “ of the King’s peace, but it must also  
 “ break the peace and unity of the  
 “ church; the *Bishop’s Dean*, in whose  
 “ Deanry the peace was broken, had, in  
 “ some cases, ten shillings for his part of  
 “ the mulct, or fine thereof, as appeareth  
 “ LL. Ed. Conf. cap. 31.—The *Arch-*  
 “ *deacon*, drawing nearer to the Bishop,  
 “ drew the more preeminence from him,  
 “ and was his coadjutor in the ordination  
 “ of clerks, having a superintendant power  
 “ over all parochial Parsons, within every  
 “ Deanry

“ Deanry of his precinct.—The *Bishop*,  
 “ as the greatest orb of the diocese, had  
 “ jurisdiction, and coercion, thro’ the  
 “ same, in all ecclesiastical causes, and on  
 “ all persons, except Monasteries exempt-  
 “ ed, [which were very few before the  
 conquest; the greatest part of the charters  
 produced in proof of these exemptions dur-  
 ing the Anglo-Saxon rule, being justly sus-  
 pected of forgery.] “ and for this purpose  
 “ had two general synods in the year,  
 “ wherein all the clergy of his diocese  
 “ assembled for determining matters  
 “ touching the church as well in faith,  
 “ as in government. [These synods were  
 regularly kept up in the diocese of Norfolk,  
 and probably in some others, ’till the civil  
 wars brake out in Charles I. time.] “ But  
 “ the *Archbishop* (to bind up this golden  
 “ faggot in the band of union and con-  
 “ formity) comprehended all the Bishops  
 “ of his province *sub pallio suae plenitu-*  
 “ *dinis*, or *sub plenitudine potestatis*; hav-  
 “ ing supreme jurisdiction to visit and re-  
 “ form in all their diocesses whatsoever  
 “ was defective, or omitted—This was  
 “ the model of the church policy: accord-  
 “ ing

“ ing to the steps whereof the *State tempo-*  
“ *ral* did likewise take her lineament”.

77. So regular, uniform, and entirely consistent, in all its parts, was the system of the antient Anglo-Saxon government : each family, each manor or villa, each province, each state, the universal good of the whole nation was studiously provided for, and strongly fenced and secured. And, if we may credit the voice of our oldest history, most punctual and exact were our ancestors in the impartial distribution of domestic justice, and equally solicitous in promoting every thing else, which might any way tend to advance the common happiness, and the glory of their nation. Ambition, luxury, covetousness, and an unwarranted love of ease and pleasure, had not yet triumphed over their zeal for liberty, and corrupted and debased their minds. And tho', after they had finished the entire conquest of Britain, full of courage and enflamed with mutual jealousies they quarreled one amongst another for the preheminence ; and their several monarchs endeavoured to enlarge their power, and extend

tend their prerogatives ; yet do we not find, that they ever so far succeeded in their illegal attempts, as to be able to introduce any considerable, and lasting innovation in the fundamentals of the constitution. —

Nor is there the least appearance of reason to induce us to imagine, that any material alteration was made in the civil polity after the union of the Heptarchy took place ; the same plan of government succeeding and subsisting in the whole state, as had been formerly established, and observed, in each particular kingdom. Egbert indeed, after this revolution, might command more numerous armies, than he was wont ; his revenue, particularly the number of Benefices in the royal disposition, and consequently his influence, might be larger than before ; but I believe it would be difficult to prove, that his power was more arbitrary, or that he was, in any respect, more exempt from the observation of the customs and laws of his country after his conquests, than he had been, whilst he remained only King of Wessex.

78. But, at length, the perpetual invasions

sions of the Danes broke thro', and, for a time, overturned this regular and well-established order of government. Amidst the distraction of a defensive war, and the continual ravages of a merciless and cruel enemy, it was impossible, either that the laws should be duly executed, or that the milder arts of peace and social life should be encouraged, and flourish. It is no wonder, therefore, that during the perpetual noise and confusion of the Danish depredations, the still voice of the constitution should be no longer heard; that disorder and licentiousness should every where reign; and that (as an addition to its other miseries) the whole nation should be so over-run with robbers and vagabonds, that such as had the good fortune to escape the sword of the Danes, had a no less frightful prospect of danger still to go thro', from their own lawless and vagrant countrymen, whose poor and mean condition of life, together with the difficulty of knowing where to find them after the commission of any offence, screened and protected them from the avenging hand of justice—  
Things

\* Vid. not. ad *Spelman. vit. Alfred. p. 77. Rex Alfredus,*

Things were in this desperate condition when the reins of government were committed to the guidance of the great Alfred—who by an amazing series of successes, (which nothing but the most consummate valour, joined with the most wise and prudent conduct could possibly have brought about) not only put a stop to the ravages and the invasions of the Danes, but likewise restored the broken constitution to its primitive integrity; and (as far as was possible) provided an effectual remedy, for the future, against those internal disorders, which had encreased to so great a height during the Danish wars.

79. To this purpose, with the advice and consent of his great council, he divided the whole kingdom into a certain number of distinct shires, or counties; or, what comes exactly to the same thing, he fixed the precise boundaries of those counties, which formerly had been left, in some measure, arbitrary and uncertain, being made larger or smaller, according as the Thaness, upon whom they were conferred, were more or less in the sovereign's favour.

The

quit Ingulphus, totius Angliæ pæges, et provincias, in comi-

The largest of these counties he subdivided into Trythings, or Laths, (as they are sometimes called) these again into hundreds, and these latter into Tythings; causing, at the same time, a general survey of the nation to be taken, and the particulars (with regard to the number of hydes, of which every manor consisted, the nature of the soil etc.) to be entered in a roll, and preserved amongst the royal archives at Winchester. In some one or other of the last and lowest of the divisions abovementioned, all the inhabitants of the kingdom in general (those of a certain rank only excepted) were obliged to have their names inscribed<sup>b</sup>, and all such persons, as could not shew to what Tything they belonged, were regarded as vagabonds, and denied the protection of the laws. And that

tatus primus omnium commutavit.—Hujus testimonio, adds our annotator, omnino credendum arbitror—non quod ante ipsum Alfredum comitatus omnino non fuerint; fuisse enim satis manifestum est; sed non quales ipse instituit. Non enim erant regionis portiones certis limitibus terminatae, sed comitum jurisdictiones, sive territoria iis pro arbitrio Regis subjecta, et nunc quidem majora, nunc minora, pro Regis favore, vel ipsius comitis merito. sic in comitatu hodierno Lincolnensi legimus contra Lincolniensem, Lindiffiensem, Gainorum. — Ab Alfredo Comitatus non ambulatorii, et pro Regis arbitrio mutabiles, solum numero, tum limitibus certi.

<sup>b</sup> *Tyrrel's Introduction*, p. 81. "All the privilege that nobles  
" me

that nothing hereafter might be wanting to preserve, as well as to restore that peace and quiet, which had been so long banished the realm — every particular householder was, moreover, obliged to answer to the community for the good behaviour of his wife, and children under fifteen years of age, as also for his servants, and more immediate dependants. So that the several householders being, in this manner, responsible for the orderly and regular conduct of their families; the Tything for its householders; the Hundred for the Tythings; the Trything for its hundreds; and the whole county for the Trythings — every one was under a sort of necessity to keep a watchful eye over his neighbour's life and conversation; and to consult the public good,

by

“ men, and gentlemen, had above the common men, was, that they were not bound one for another, so as to be part of any Deanery or Tything; but each of them was head of his own Friburgh, and his family was, as it were, a distinct Tything of itself.” See to this purpose *LL. Canuti*, cap. 50. *LL. Edwardi Confess.* apud Wilkins, p. 202, 203, etc. and *Britton*, cap. 29. They were not the nobility, in general, I suppose, who were exempted from the necessity of being enrolled in of the Tythings; but such of them only, as were members the King's court, or lesser Senate; and consequently could y be called to an account, and tried before their Pares or als, their brethren of the same assembly.

by taking all due care, that the speediest punishment should be inflicted for every breach of the laws : so that it was hardly possible for a malefactor to escape with impunity, whilst it was made the interest, as well as the business, of so many different persons to bring him to immediate justice.

80. For it must be remembered, that each of these minute divisions of the kingdom had its separate court of justice, to which its respective members were accountable, as often as they were called upon in a legal manner<sup>a</sup>, together with a governor, or president, chosen by, and from among themselves. *In the tything-court* all such matters of dispute, as arose between the several masters of families of the same tything,

<sup>a</sup> In the early Norman times [and consequently before them] the trials for lands and goods in the County, Hundred, [Tything,] and Lord's courts were very considerable, and for good quantities of land, and the suitors to the Hundred and County courts were as considerable. All men, especially of the laity, of what quality soever within the Hundred, owed their attendance there, as appears by old writs. *Brady's preface to his history*, p. 51. So that tho' the nobility, as they were called, or members of the domestic senate, were not obliged to be enrolled in any of the Tythings, (their respective families being looked upon, in the eye of the law, as so many distinct Tythings), yet did not this excuse them from a personal attendance in the Hundred and County courts. In this respect, they were still regarded by the law, in the same light, as the other common Freeholders.

<sup>b</sup> *Tyrril's*

ing, were heard and decided; and every thing else consulted and provided for, which concerned the common interest of the little community. But where the point in question was of a higher nature; or the dispute lay between persons of different divisions, in such instances, the matter was carried into the hundred; trything, or county-courts. We must observe, however, that appeals were allowed from each of the inferior to its immediately superior court, if either of the parties thought himself aggrieved after the decision was made: and from them all, in certain cases at least, sometimes to the King's court, and sometimes, perhaps, to the supreme or general assembly of the kingdom<sup>b</sup>. This partition of the kingdom by  
Alfred

<sup>b</sup> *Tyrrel's Introduction*. p. 85. "The subject must needs find great ease in having justice administred to him in smaller actions, in the court of Decenary or Tything, even at their own doors; or else in appeals, or greater actions, at the court of the [hundred or] Trything, or Lath; from whence they might remove it to the county court; and, if they thought themselves aggrieved there, then might they bring it before the King himself." See likewise *Nat. Spelman. ad vit. Alfred.* p. 76. Appellationes etiam ab hisce comitiis (comitativis sc.) sicut et controversiae majores, et quae vias quatuor publicas, alveos fluviorum majorum, vel diversos comitatus spectabant regi in magnis suis consiliis dijudicanda proponebantur.

Alfred into so many minute republics, (or Tythings, or Borows, as they were sometimes called<sup>c</sup>) with each its cwn Alderman, President, or Judge at its head, has been thought by some to have furnished occasion for the introduction of an easy, and natural innovation in the constitution; and to have afforded the first hint of that custom, which has prevailed amongst us for  
so

<sup>c</sup> *Lambard's Perambulation of Kent*, p. 27. It is to be noted, that that which in the West-country was at that time (and yet is) called a tything, is in Kent termed a Borow, of a Saxon word which signifieth a pledge or surety.

<sup>d</sup> See *Mr. St. Amand's Essay on the legislative power of England*—It may not be improper to observe, that tho', in conformity to the general opinion of our historians and antiquarians, I have considered King Alfred, as the author of the division of the kingdom into Tythings and Hundreds; yet I am really of opinion, that this truly great prince did little more in the matter, than what he did likewise by the counties, i. e. restore the ancient constitution, rather than introduce a regulation quite new and unheard of by his subjects before. Had the original polity of these northern people been more accurately preserved, I don't doubt, but that we should have found like wise, that they brought this constitution with them, together with their other customs, from Germany. It seems indeed to have naturally resulted from the manner in which they were wont to model their army. For in their military expeditions, as the forces of every province or tribe always marched and fought by themselves; so were these forces regularly divided into so many distinct corps of ten, a hundred, and a thousand men, each division having its own proper officer at its head.—Upon their settlement therefore in a new country, the land would be apportioned into its distinct provinces or shares; first, that for the whole tribe, which would regularly become what we call a shire, or county with its prince at its head; again, out of this larger portion, each thousand would

so many ages, of sending deputies, or representatives, to the Mycel-gemot<sup>d</sup>.

81. For before this institution of Alfred every Anglo-Saxon landholder, that is, every one who had acquired a property in the land of the kingdom, whether by conquest, or purchase, or donation, (at least to a certain quantity) had an undoubted right, and seems to have been obliged under some penalty;

would have its lot by its self, and, of course, its leader in war would become its governor in peace; the land assigned for the thousand would next be divided into hundreds, and these again into portions for ten.—Thus would every thing be immediately resettled without disorder and confusion; the new colony would be equally prepared for peace or war, every man would know his own station, and the president in peace would become their leader in battle; and as he was usually the eldest man amongst them, we find him accordingly distinguished by the title of the Ealdorman (the old man) of the county, the trything, the hundred, and the tything.—Now had this constitution been first invented by the wisdom of Alfred, we should have found it subsisting only in this kingdom; on the other hand, if it was one of the primitive Germanic regulations, as I suspect it was, then may we expect to trace the footsteps of it likewise in the other conquests of that nation.—and accordingly so we find it to be in fact: For tythings and hundreds, both name and thing, were undoubtedly known in Italy, long before the days of Alfred, as appears from the old charters produced by *Muratori, Antiq. Ital. med. aevi Diff.* 10. p. 519.—Sed quid de *Decanis* supra non semel memoratis dicendum? Iis addo etiam *Centenarios*, quorum munus itidem familiare olim fuit. Du Cange, in glossario latino, *Decanos* a Graecis appellatos esse ostendit, qui decem militibus praeesse. Decuriones apud Latinos ii dicebantur; centenarios vero, qui centuriae militum praefecti erant. Tum addit apposite ad rem nostram, utrumque hominum genus sub *Langobardis* et *Francis* fuisse *Judices minores*. Hoc est,

penalty, to attend the service of the public in its Mycel-gemots; as it is undoubted, that the laws of his country required him to be present at the stated meetings of the hundred and county-courts. This duty could not but be looked upon in those early days of simplicity, before avarice and ambition had got the better of the plainer dictates of nature, as a great hardship and inconvenience; as a burthen scarcely to be born, especially by those, whose habitations were situated in the remote parts of the kingdom, or whose possessions, either thro' the misfortunes of war, the numerousness of their families, or by other accidents, had been much diminished. Our ancestors, indeed, whilst they continued in their native country, and had every year a certain portion of the national

*Decani* per decanias, sive 10 familiis jus dicebant; centenarii vero, per centurias, sive centum familiis. Our author then goes on to quote passages from the works of *Walafridus Strabo*, and other authors to the same purpose—afterwards he thus proceeds—Quibus ex verbis inferri posse videtur populum in agro, sive in castellis, ac pagis habitantem, divisum olim fuisse in centenas sive centurias familiarum; has autem rursus divisas in *Decanas*, sive *Decanias*; illis centenarii, istis decani praeerant; utriusque jus populo suo in minoribus causis dicebant. Haec quoque sententia est *Wendolini* in notis ad legem Salicam, imo et *Johannis Jacobi Chiffletii* in glossario Salico, qui haec fusius illustravit. Quod certum puto, a *Decanis* ad *Centenarios* appellabatur: ab his

ad

al territory assigned to them, sufficient to support them in a manner suitable to the character which they sustained, were of course but little solicitous about the management of their more private, and merely domestic concerns. Above all sorts of traffick and commerce, they had no other business to follow, but to indulge their appetite for war, and to attend the provincial, and general assemblies, as often as either custom, or any particular emergency called for their presence—their private interests, in the most literal sense of the words, were then inseparably united with those of the nation. But in England the case was much altered in this respect; the property of the land, no longer temporary and vague, was now become fixed and settled; and consequently,

*ad comitem sive judicem civitati praefectum.* Primus autem qui regionem civitati subjectam in centenas et decanias divisisse creditur, fuit Chlotarius 2. Rex Francorum circiter annum Christi 595. Tho' this be sufficient to refute Alfred's claim of being the first inventor of this division; yet, as I have said before, it is far more probable, that all these nations, Franks and English and Lombards, brought it with them from their common mother Germany. We have frequent mention made in the Capitulars, and other the old laws of the Germans, of the *Centenarius*, the *Placitum Centenarii* etc. See *Arngrim. Jónas Crymogæa*, sive de rebus Islandicis, p. 67.

quently, what was once lost or parted with, was not easily to be recovered again.

82. Tired, therefore, and exhausted by their long and ruinous wars with one another, as well as obliged to give way to the continual invasions and attacks of their cruel enemy the Dane; and many of them by these means, especially in the northern and eastern parts of the kingdom, being deprived of a considerable part of their antient possessions, it became absolutely necessary for all, if I may say so, to turn better oeconomists for the future; and to be more careful and diligent in the skilful management of what still remained to them, than they had formerly been. But how much was the course of their attention to their own affairs lett and interrupted, and their general expences encreased, by being called upon to be present in the Mycel-gemots, upon all ordinary and extraordinary occasions? There is no question therefore but the generality of the landholders would gladly fall into any expedient, consistent with the state of liberty, which they were born in, and which they had hitherto inviolably pre-

\* But if Tythings etc. were known before Alfred's time,

preserved, in order to exempt themselves, as much as possible, from what they could not but regard, as a very heavy burthen upon them. The division, or restoration rather (as I think) of the antient division, of the kingdom by Alfred into tythings would easily suggest to them a safe and commodious method of relief in this respect. For since it is evident from the remains of our antient history, that each of these smaller bodies or societies annually elected one of their own members, as a judge or head, to preside over them, nothing was more obvious and natural, than to depute the same person, to whom they had already by their voluntary choice given the precedency amongst themselves, to represent them in the Mycel-gemot, and to take care of their common concerns in the public debates, and resolutions? Nor can we, I think, make any question of the King's readiness to acquiesce in such a delegation, as the national meetings would hereby become less numerous, and consequently more manageable.

83. The opinion, which I have here presented,

might not this method of deputation, likewise, be in use before

presented, was, I think, first recommended to the publick by *Mr. St. Amand in his Essay upon the legislative power of England*—and, I own, there formerly appeared so high a degree of probability, in what that gentleman offered upon this subject, as well as in what he farther urged concerning the origin of *Trading Burrows*, and the occasion of their sending deputies to the Anglo-Saxon national councils, or parliaments, that I could not avoid adopting his sentiments upon both these heads, and endeavouring to enforce his hypothesis by such other arguments, as seemed to me, when the former edition of this book was printed, satisfactory and conclusive. But I am not ashamed to confess, that a larger view, and more accurate examination of the remains of English antiquity, as they lie scattered up and down in our old

his days?—I cannot say, that it was never practised, till the period where I have now placed it; but there really seems to have been no occasion for it, till that time, or even opportunity of bringing it into use. The kingdoms of the Heptarchy were each of them so small, that all the landholders might easily be present in person at their respective Mycel-gemots: there was, likewise, land enough for the original conquerors to live at their ease, without the necessity of perpetually attending their private business. Very soon after the union of the Heptarchy the Danish invasions

old laws, charters, and histories; have, at length, convinced me, that we were both somewhat too hasty in forming our notions; and that they were not so well grounded, as points of such interesting consequence ought to have been. That he, who travels through the dark and intricate labyrinth of monkish antiquity, should sometimes stumble, and miss the direct road, is not to be wondered at; and the wanderer will always be kindly excused, rather than hastily condemned, especially if he expresses an humble readiness to return into the right way, as soon as he can either feel it out himself, or shall have it pointed out to him by others. With all due submission, therefore, to the learned reader's candour and better judgment, I shall once more take the liberty, before I put an end to this Essay, to offer my sentiments upon the  
state

vations began; and consequently the whole Anglo-Saxon polity continued much unsettled till the reign of Alfred; so that, the circumstances of the times thoroughly considered, it will be thought, I believe, that I have not much erred in placing the beginning of sending representatives to the Mycel-gemot towards the latter end of king Alfred's reign.—I must once more refer my reader to Mr. *St. Amand's essay on the legislative power*, where this matter is particularly considered.

state and condition of tradesmen, during the Anglo-Saxon period of our constitution; and to give, what seems to me, the best-founded account both of the *rise of trading Towns or Burrows* in this country, and of the origin of that important privilege, which some of them at present enjoy, of sending deputies to the legislative assemblies. “For, as Mr. Madox has observed, “the notions, which at this day “men generally entertain concerning these “points, are so different from the notions, “which our ancestors seem to have had, “that it may be worth the while to en- “quire into the true state of these matters, “and to rectify our opinion upon these “subjects, if they are found to be erro- “neous.”

84. The Anglo-Saxons, as has been already frequently observed, were originally extremely averse to trade; they looked upon it, as beneath the dignity of a soldier and freeman to condescend to practise the mechanic arts, and, agreeably to their notions of things, it was the business of slaves, and the sure indication of a mean and for-  
did

\* *Madox Firma Burgi*, p. 1.

did disposition of mind, to submit to do the work of other people. Necessity, however, which makes even the hardest things palatable, at length, getting the better of their natural inclinations and habitudes, forced them into a different way of thinking and acting. For as the whole land of England had been long since appropriated to private persons, and consequently was become estates of inheritance, it must needs happen, in a long tract of time, and thro' a variety of unavoidable accidents, that many even of the best and noblest families, the descendants of the original conquerors themselves, would be reduced to great want and distress, unless they betook themselves to some employment besides arms for their support. For beg they could not, without throwing themselves out of the protection of the laws, and being treated, accordingly, as vagabonds. Such, in particular, must have been the case of great numbers of our brave ancestors, who, having been first settled in the north and middle of England, had the misfortune to be entirely deprived of their houses and possessions

missions in the Danish wars. Trade therefore was the only means left, from whence the greatest part of these unfortunate persons could hope to draw a comfortable subsistence; and to betake themselves to this, our history assures us, they were especially encouraged by the exhortation and rewards of Alfred, under whose immediate care and protection they had been obliged to throw themselves. For this wise prince knew too well the immense advantages accruing to any kingdom from the encrease of its commerce, not to do every thing, which lay in his power, in order to promote its progress, and advancement amongst all his subjects, as well those, who had been free-born, as those, who were of an inferior rank. And accordingly, to effect so salutary a purpose, he invited over foreigners from all parts of the continent, that they might instruct his people in those arts,

\* *Spelman's life of Alfred*, p. 114. Postremo Rex secum reputans, quantum regno detrimentum contigerit inopia artificum et fabricorum, aequè ac eorum qui magis ingenuas artes professi sunt; homines ejusmodi undequaque ad se arcessivit. Adeo ut cum per alias gentes publicaretur quid requireret, qualique munificentia usus esset versus eos, qui quavis facultate pollerent, ad aulam ejus cito convolarunt omnium studiorum advenae, Galli,

arts, sciences, and professions, with which they had hitherto been but little acquainted; he encouraged strangers to come into the island by munificent rewards, and gave them moreover many personal privileges and advantages—and, that no motive might be wanting to call forth and excite the utmost diligence and application of his people to foreign as well as domestic traffick, a law was made, which conferred the honour of King's-Thane upon such merchants, as had crossed the sea three times at their own expence. Here then must we lay the first foundation of our English trade; and at this time were sown the seeds of that commerce, which, however small in its beginning, has since grown up, and extended its branches far and wide, shedding its various blessings of wealth, strength, and power, even to the remotest corners of the island.

85. Commerce, however, notwithstanding

Galli, Franci, Aremorici, Britanni, Germani, Frisones, Scoti, Cambro-Britanni, alique quam plurimi, quos dum regia benignitate, pro suis quemque meritis excepit, eadem opera patriam civibus in omni artium genere peritis instruxit: illiusque, eorum ope instructae, defectus ac squallores plenius atque maturius deterisit ac supplevit, quam tantulam unius hominis vitae portionem unquam fuisse effecturam quivis arbitraretur.

standing the utmost efforts of Alfred, was never able to advance itself to any considerable height, or to preserve the respect, which was due to its vast importance to the state, under the government of his successors in the Anglo-Saxon throne; nor were the persons who continued to follow traffick; who bought, and sold, and professed the mechanic arts, even looked upon in the light of native freemen, or entitled to the privileges of such, farther than what regarded the mere security of their persons. The sword, as it was the most common, so was it reputed, likewise, the most respectable and honourable way of acquiring an estate in

\* *Spelman* ad voc. *Commendatus*. Commendare, est in clientelam, et tuitionem alterius (quod *Mundeburdium* alias vocabant) concredere. *Commendatus*, qui sic concreditur, et sub protectione potentioris acquiescit. Idem ad voc. *Geldum*. Gilda est societas quorundam, puta charitatis, religionis, vel mercaturae gratiâ confoederatorum; bona quaedam, interdum et praedia, nec non aulam societatis, praetorium, habentium communia. Latinis, collegium, fratria, adunatio.—Inde nomen, quod ex conjectis pecuniis, sodalitiis impendio subministratur. — *Brady*, in his *treatise of English Burrows*, after having produced (as he tells us p. 16.) all the instances which could be found in both *Domestick-Books*, which give any light to the understanding what Burges and Burgeses were in the Saxon times, and in the reign of *Edward the Confessor*; as likewise, afterward, in the reign of *William the Conqueror*, concludes with saying; that the Burgeses or Tradesmen in great towns had in those times their patrons, under whose protection they traded, and paid an acknowledgment

in those military ages. For it evidently appears from *Domesday-Book*, which has a common reference both to the later Anglo-Saxon, and to the earliest Norman times, that all the tradesmen in general, when that great national record was composed, all the inhabitants of cities and burrows, as such, were in *Clientela*, or *Commendati*; that is, under the patronage and protection of the king, or of some private lord\*. Living many of them together, or near to each other, for mutual aid, help, and assistance; and forming themselves into guilds, fraternities, or companies, the more extensively, as well as more pro-

ledgment therefore: or else were in a more servile condition, as being in *dominio Regis, vel aliorum*, altogether under the power of the King, or other lords; and it seems to me, that then they traded not, as being in any Merchant-Gild society and community, but merely under the liberty and protection given them by their lords and patrons"—The reader, who has not *Dr. Brady's* book before him, may perhaps be curious to see how the cities and towns are really entered in *Domesday-Book*—*Bath.* Rex tenet *Bade*. T. R. E. [sc. tempore Regis Edwardi] geldabat pro xx hid. quando scira geldabat. Ibi habet Rex 64 Burgenfes redditentes 4 lib. et 90 Burgenfes aliorum hominum reddunt ibi 60 solidi—*Romney.* In *Romenel* sunt 85 Burgenfes, qui *pertinent*\* ad Aldintone maner. archiepiscopi, et valuerunt, et modo valent domino sex libras, sc. per annum.

\* *Pertinentes* (*Du Fresn.* ad voc.) Servi qui ad aliquem pertinent, subditi, tenentes, etc.

profitably to carry on their several occupations from a common fund, or joint-stock—they were entirely regarded, in the eye of the community, as the *men*, or *subjects*, of those proprietors, upon whose lands they dwelled, and under whose guardianship and inspection they were permitted to buy and sell, to enter into partnership with their fellow tradesmen, to make bye-laws for their better regulation, and to employ themselves in their respective branches of commerce. And, accordingly, in acknowledgment of the security, which they possessed under their patrons government, and of their constant dependance upon his good will and pleasure, they not only paid him an annual rent, or head-tax as it may be called, but were obnoxious, likewise, to all such rules, burthens,

\* See *William the Conqueror's* charter to the city of London—quoted in *Brady's Treatise of English Burrows*, p. 16.—and that diligent enquirer's remarks upon it. “How long in most Burrows, very many Burgesles remained in this servile state, or others in a middle or neutral state between servitude and freedom—I cannot say certainly; but do suppose, until our antient Norman kings granted by their charters, there should be merchant or trading Gilds, communities and societies in Burghs; and gave them free liberty of trade, without paying *Toll* or *Custom* any where, other than their Fee-ferm-rent n  
“ lieu

thens, and impositions, as he was pleased, from time to time, to lay upon them<sup>b</sup>. Nor is there, perhaps, a single example upon record of any city, burrow, or trading town under our Anglo-Saxon princes, which looked upon itself as wholly free; tho' some of them enjoyed a greater liberty, had more privileges conferred upon them, and were liable to fewer restraints than others. As the *men* of the King (and the same is true, likewise, if the town belonged to any other lord) his burgesses were originally, and customarily, under his own immediate and private jurisdiction; they had not the benefit of the common, or general law; they could not even bestow their sons and daughters in wedlock; they had not the power to dispose of their goods and chattels, either by will, or sale, without

“ lieu of them, where that was reserved; or to raise and multiply such payments by the encouragement of trade, which by the grants of such liberties did mightily encrease, where the king's bailiffs collected them.” *Spelman. Gloss. Burgarii et Burgenfes*—sunt Burgorum, villarumque clausarum seu munitarum habitatores. Hi dum cauponandis mercibus, et rei mechanicae operam navarent, generosae turbæ (militiam omnino admiranti) despectui erant; adeo ut cum illi, nec connubia jungerent, nec Martis aleam experirentur, etc.

without a previous licence purchased, or otherwise obtained, from their patron; nor could their widows marry again, but with the permission of their superior—different in this material point from the Anglo-Norman Barons and free-tenants, who were, likewise, frequently denominated the *men* of the King, or of him into whose retinue they had been admitted, that the services expected from these latter were always limited and circumscribed to faithful attendance, advice, and assistance; and were ever of such a nature, as military men might honourably be employed in.

86. As trade loves to be secure, and wholly subsists by a continual exchange and sale of the various commodities, which it deals in; so will it always be seen to take root, and flourish most in places, where there is the greatest resort of company, and where the merchant and manufacturer has the least to apprehend both for themselves, and the fruits of their industry.—Consequently,

<sup>a</sup> *Spelman*. ad voc. *Burgus*, vulgari nostro *Borough*, non paucis *bery* et *bury*. Proculdubio Saxones nostri *Burgos* nuncuparunt, quas alii urbes et civitates—See *Brady* and *Madox*, who have collected

quently, we may expect to find these trading communities (whether distinguished by the name of cities, towns, or burrows<sup>a</sup>) chiefly abounding, first, in such districts, as were honoured with the usual residence of the prince, bishop of the diocese, or governor of the county—secondly, upon navigable rivers and the sea-coasts, where the opportunity of safe ports and harbours offered a convenient situation, for the ready exportation and importation of goods, and for the easy carriage of them—and lastly, in places of defence, encompassed with walls, and strengthened with castles. Nor can it be questioned, but that the lord of the estate, upon whose demesnes these trading collections shewed an inclination to settle, and fix their abode, would afford them all reasonable protection and encouragement, both as the number of his subjects (if I may so term them) would be hereby encreased, and the value of his annual income much augmented.

*Mer-*

collected every thing relative to the notation of the word, the former, in the beginning of his *Treatise of English Burghs*, and the latter, in his *Firma Burgi*.

*Mercats*<sup>b</sup>, and *Fairs*, seem likewise to have been requisite appendages to such places, as were appropriated to the habitation of tradesmen and artificers. For not having land enough of their own to yield them the conveniences of life ; or, at least, not leisure sufficient to cultivate with their own hands the estates, which by the bounty of their patrons were sometimes conferred upon them — this necessarily occasioned a periodical resort of other people, as well to supply them with provisions, and to furnish them with the materials proper to be made use of in their respective occupations ; as to purchase their commodities, and to transport them elsewhere — Hence, therefore, besides the immediate gain arising to the lord of the soil from the annual rent paid to him by the burgesses, and from the internal jurisdiction of the town, other considerable branches of profit would, moreover, accrue to him from such tolls, duties, and customs, as he might think proper to exact both from his own men, and

<sup>b</sup> See 61 law of William the Conqueror in *Wilkins's* edition, p. 229.—Item nullum mercatum, vel forum sit, nec fieri permittatur, nisi in civitatibus regni nostri, et in burgis muro vallatis,

and from foreigners, for the liberty of passing his bridges, bringing goods to his town or burrow, and of being permitted to buy and sell in it. And conformably to the idea, which we have here given of these trading bodies, they were always looked upon in antient times, as a most valuable part or parcel of the estate, upon which they were erected; and an officer was accordingly appointed by the King, or other proprietor, under the name of his *reve* or *steward*, both to collect his ordinary dues, (unless they were let to farm to the townsmen themselves, as was sometimes practised by way of favour to them) and to govern the citizens or burgesses in his name. For being regarded, in a political view, as entirely belonging to their patron, and constituting a portion of his demesnes, they had no title to the benefit of the general law; but received justice, in most cases, from their own lord alone; who was, in the same manner, answerable to the public for the regular and orderly behaviour

*tis, et in castellis, et in locis tutissimis, ubi consuetudines regni nostri, et jus nostrum commune, et dignitates coronae nostrae, deperiri non possunt etc.*

viour of his townsmen and burgesſes, as he was for the peaceful demeanour of the cottagers, bondſmen, and other ruſtics, who lived upon his rural demefnes<sup>c</sup>.

87. To enquire, therefore, whether the men of theſe trading cities, towns, and burrows, as ſuch, either appeared in perſon, or ſent their deputies to the Anglo-Saxon national aſſemblies, will be thought, I imagine, quite unneceſſary, after what has been obſerved of their early ſtate and condition—Give me leave, however, to offer an additional argument to prove, that they neither were preſent at theſe meetings, nor indeed had any pretenſions to be there. Our German anceſtors, during the whole time of their government in this kingdom, knew no other general, or ſtate tax, but what was laid upon land, their perſonal eſtates being entirely exempt from all kind of public burthens, or taxationſ whatever, except

<sup>c</sup> Vid. *Spelman. Gloſſ. Manerium.*

<sup>d</sup> *Spelman's Gloſſary, Subſidium.* I find not, that the Saxon kings had any ſubſidies collected after the manner of thoſe at this day; but they had many cuſtoms, whereby they levied money of the people, or perſonal ſervice, towards the building and repairing of cities, caſtles, etc. But when the Danes oppreſſed the land, king Ethelredus, in the year 1007, yielded to pay them for the redemption

cept such as were paid to the support of the church, and the maintenance of its ministers. Thus when it was judged expedient by the *Mysel-gemot*, in the reign of *Ethelred the unready*, rather to buy an inglorious, and precarious respite of the plundering Danes, than bravely to defend their properties with the edge of their swords—the large sums of money, which were to be raised upon the occasion, were wholly laid upon the land, every hyde, into which the kingdom had been divided either by Alfred, or more probably at the time of the original conquest, being obliged to pay its proportionate share. This tax, therefore, (which was called *Dane-geld*, on account of the persons for whose sake it was primarily imposed) was due from, and could only be legally demanded of, the lords or proprietors of land—and consequently did not at all affect (in the first instance at least)

demption of peace 10,000*l.* which was afterwards encreased to 36,000*l.* etc.; this was called *Danegeld*, i. e. *Danica solutio*. And for levying it, every hyde of land (that is, every ploughland) was cessed twelve pence yearly, the church-lands excepted; and thereupon it was called *Hydagium*; which name remained afterwards upon all taxes and subsidies imposed upon lands etc. — See likewise the same author, *Elida*.

least) the burgesſes or inhabitants of the trading towns or cities, as ſuch; not only, becauſe their property was chiefly perſonal, but, likewiſe, becauſe they appertained to the ordinary juřiſdiction of their private patrons and proprietors—in the ſame manner, as the rural villas and demefnes, together with their ſeveral occupants, belonged to their proper lords, and were not looked upon as under the immediate authority of the Mycel-gemot. It is not indeed improbable, and there is good evidence to conclude, that when the town, whether its employment was agriculture or traffick, was able to bear the burthen; that is, when the merchants or husbandmen were in thriving circumſtances, their ſeveral proprietors, whether one or more, would always take care to get their extraordinary expences reimbursed, as nearly as they could, by compelling their men or tenants, either to pay the whole ſum, which had been aſſeſſed upon their diſtrict, or to contribute a reaſonable aid towards it; the former muſt have been the caſe of the tenants in antient demefne, (as the King's Soccagers and Burgeſſes were always reputed

puted to be) in as much as the assessments laid upon the territories occupied by them; could not be accounted for to the collectors of the tax by the King himself.

88. This then is the substance of what has been hitherto offered upon this subject, that under the Anglo-Saxon government, the men or burgesses of the trading cities, towns, and burrows, were always considered as a part of the estate of the king, or of some other proprietor of land, upon whose demesnes they lived, and under whose protection they bought and sold — that though, with respect to their persons, they were most of them as free as their patrons themselves, and were commonly governed by their own officers, agreeably to local customs, and to such bye-laws, as had been agreed upon amongst themselves; yet that these privileges were always with the permission, and under the superior rule and inspection of a reeve or steward, who generally resided amongst them, as the representative of their proprietor — that they were not regarded in a political view as members of the great community, or were of more value and estimation

mation in the state than the ceorls, husbandmen, or customary tenants—that they were not obnoxious to the national taxes, nor were, in fact, ever taxed by the Mycel-gemot ; and consequently, that they never were, nor had any just claim to be, present in that assembly : but, on the contrary, were always supposed to give their assent, and to promise obedience to such new laws, as were there agreed upon, in the persons of their patrons, who, accordingly, were accountable to the public for their regular and orderly behaviour—that, besides the certain rents, tolls, and duties, which they annually paid to their several lords, they were moreover liable to be arbitrarily taxed by them, as often as the necessity of their affairs, or the circumstances of the conjuncture made it requisite for them to demand an extraordinary assistance from their men and tenants—and, lastly, that tho' some of these collections of tradesmen enjoyed larger privileges, and were allowed more liberties than others, either by the connivance, express concession, or favour of their lords, yet that none of them were entirely

\* See *L'Esprit des Loix*, liv. xxxi.

entirely free, and altogether emancipated from the yoke of dependance.

89. We are now prepared to enquire, whether any alterations were introduced in the condition of these trading burrows and demefne estates by the Norman conquest, and of what nature they were. Hereditary benefices, or fees, together with their customary concomitants and burthenis, (such as personal service whenever the superior was engaged in a defensive war, or a valuable commutation in lieu of it—and the payment of a pecuniary aid to him upon the marriage of his eldest daughter, or upon making his eldest son a knight, or when he himself was to be redeemed from captivity) were all well known, and had, for some time, been established in France, when the Duke of Normandy invaded and made himself master of England. Agreeably, therefore, to the common practice of the age, in which he lived, and of the country, wherein he was born—the estates which *William* took from his new subjects (after reserving to himself such a part of them, as, added to the other branches of

his revenue, was thought sufficient to maintain the splendour and dignity of the crown<sup>b</sup>) he distributed, according to compact, with great liberality amongst those, who accompanied him in his expedition, (namely, the Normans, Anjouvins, French, Poictouvins, Flemings etc.) to hold of him, as their chief, or head, by military service, as they held their estates upon the continent; and under the obligation of finding a certain number of knights, or men at arms for the war, whenever they should be duly summoned for that purpose. The lands, which after this manner, and upon these conditions, were most bountifully bestowed by the Conqueror upon the principal leaders and captains of his army—they again

<sup>b</sup> It appears from *Domesday*, that the Conqueror had no less than 1422 manors, dispersed up and down in the different parts of England.

<sup>c</sup> The Conqueror was very profuse in making these grants. For to *Hugh Lupus* was assigned the whole county of Chester; to the *Earl of Moriston and Cornwall* were given 793 villas or manors: to *Alan Earl of Britain and Richmond* 442; to *Geofrey Bishop of Constance* 280; and to others similar grants were made in the same extravagant proportion.—The value of a *Knight's-Fee*, or of land sufficient amply to maintain a man at arms and his family seems, in the Conqueror's time, to have been about 5*l.* per ann. and consisted of five hydes of land, making in all about 640 acres—But however nothing certain can be asserted upon this head—See *King John's Magna charta*—and *Lib. Nig. Schaccar.*

again parcelled out (after having set apart for their own use, under the title of their demesnes, what was looked upon as sufficient to furnish them abundantly with corn, victuals, cloathing, and other provision for hospitality) amongst their respective followers and dependants in such shares and proportions, as they pleased; to be held of them, as the supreme lords, under the same conditions and limitations, as they themselves held their estates of the King°. By this means, instead of the ancient Anglo-Saxon laws, by which this country had been hitherto governed, the feudal customs and institutions were every where introduced, and by degrees grew in to common practice; whilst the few English,

p. 165. Knights-Fees of the new feoffment, or such as were constituted by K. Stephen and Henry II. were generally less, than those of the old feoffment, according as the lord and his tenant could make their bargain. See *Rossi Warwicensis Hist. Regum Angliar.*, p. 86.—Carucata terrae est quantum aratrum arare poterit in sationali tempore: et 4 virgatae [each virgata making about 32 acres] constituunt unam hydam terrae: et quinque hydae constituunt feodum militare, cujus relevium [which was generally a year's rent of the old value] est 100 solidis—et sic anno 15to Regis Gulielmi Conquæstoris reperta sunt in Anglia sexaginta millia feoda militum ducenta et undecim. Haec non a me scribo, sed ut reperi alibi hic et illic in antiquis libris." So the Anglo-Saxon Ceorl, if he had fully five hydes of land, was upon the level with the Thanes.

\* *Madax*

glish, who were permitted to live upon their own estates, were obliged to submit to accept of them from new masters, to hold them by new titles, and subject to new regulations<sup>4</sup>.

90. Towards the latter end of the Conqueror's reign, under various pretences of rebellion, disaffection, and reasons of state, the whole land of the kingdom (as authentically appears by the names of the several proprietors still extant in Domesday-book) was fallen into the hands of the Normans, and held of the King either immediately, or mediately, except a very small proportion, which still remained in the occupation of the English, having been conferred upon them by *Edward the Confessor* as a recompence for taking care of the royal forests, woods, herds, hounds, etc. and still continued to them on account of the same base services by their new master. And as the possessors of feudal estates by military tenure were absolutely exempt from all other services whatever, but what were ascer-

<sup>4</sup> *Madox History of the Exchequer*, p. 122. In truth it is marvellous to see [speaking of the times, which immediately followed the Norman conquest in England] so great an alteration in the course

ascertained, and of well-known custom incident to their fees; as they were not even obliged to serve in the wars, unless when the sovereign was present; as they were lords and judges of their own families, tenants, and demesnes, and could not themselves be ordinarily judged, either in civil or criminal cases, but by their peers and convassals; as they were obnoxious to no demands at all upon their personal estates, nor liable to any taxation upon their real ones, (unless in the cases abovementioned) but such, as they were pleased voluntarily to impose upon themselves in common council, when the necessity of the King's affairs required him to ask a reasonable aid of them — for these reasons, amongst their other honourable appellations, they were stiled, by way of special eminence, *Free-men*, and *Free-holders*, (to distinguish them from tradesmen, husbandmen, and tenants by baser services, from such as lived by the balance, the plough, and

course of law proceedings in this country, wrought in so short a time; and that so little, in effect, of the Anglo-Saxon laws and usages were retained.

and the crook<sup>a</sup>) and of such only are we to understand the *Communitas regni*, and the *libere tenentes* so frequently mentioned in our earliest Norman records, charters, and histories<sup>b</sup>. This remark we shall find of no small importance, as it will lead us to the clear determination of a very material question, which has been much controverted by our antiquarians, namely, of what persons the antient Anglo-Norman *Concilia*, *Colloquia*, or parliaments consisted. They could consist of no other persons than of the feudal, or immediate tenants of the crown by military service, whether they were distinguished, as ecclesiastics, by the various stile of Archbishops, Bishops, Abbots and Priors; or, as laymen, by the different titles of Counts, Barons, Knights and Freeholders—all who held their estates directly  
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<sup>a</sup> Selden's *Janus Anglorum*, p. 92. (English translation) A suit of law being waged in the time of Edward I.—it was then, after several disputes bandied to and fro, and with earnestness enough, decided by the judgment of the court, that those tenants, which hold in fee from the antient domain of the crown, as they call it, are by no means comprehended under the title of *Free-men*.

<sup>b</sup> Brady's *Glossary*, at the end of his animadversions upon Mr. Petit and others. *Communitas regni*. Antiently the Barons only, and tenants in capite, or military men, were the *Community* of

of the King by the sword, whatever was the number of their fees, whether more or fewer, and whatever the number of men at arms, whom they were obliged to furnish, were *Peers*, and, in a civil sense, equal to each other in every respect—All of them customarily attended the sovereign at the three great Christian festivals, and all of them were ready to obey his summons, whenever else he should think proper to demand their advice and assistance: personal attendance upon the superior, both in peace and war, being one of those necessary incidents of feudal or military tenure, which nothing but age, sickness, poverty, or a special license could ever dispense with.

91. And, accordingly, as our antient parliaments, under the eight first princes of  
of

*the kingdom*: and those only meant, taken, and reputed as such in our most antient historians and records"—which our author fully proves from a great number of instances produced by him—Let me only add the *Annals of the Priory of Dunstable* ad annum 1263. p. 359. Post hæc, ut inquireretur assensus *Communitatis*, convocati Episcopi omnes, Comites, Barones, Abbates, Priores, per literas Domini Regis, etc.—*Ross. Warwicens. Histor.* ad ann. 1294. Eodem etiam anno habuit Rex a *Communitate* terræ decimum denarium, et a *Civitatibus* septimum, etc.

of the Norman race, were made up only of the immediate tenants of the crown by military service\*, (except in one extraordinary instance, only, in the time of *Henry III.*) so their deliberations, and acts, related chiefly, or rather entirely, to what concerned themselves; to the furtherance of their own views, and the maintenance of their own interests, claims, and privileges. They advised the sovereign in the disposal of such fees, whether lay or ecclesiastical, as were become vacant either by death or escheat—they consulted about the most effectual means to defend the kingdom from any threatened invasion from abroad, or to annoy the common enemy, after it was actually attacked—they complained, and demanded the redress of all such arbitrary encroachments upon their antient rights, as tended to introduce customs prejudicial to their liberties, securing themselves, as well

\* *Spelman. Gloss. ad voc. Parliamentum.* Sine ut, fodes, dicam, collegisse me centenas (reor) conciliorum edictiones (tenoresque ipsos plurimorum) ab ingressu Gulielmi I. ad excessum Henrici III. existentium, nec in tanta multitudine, de *Plebe* usquam reperisse aliquid, nisi in his delituerit—Our author then produces some instances of these parliamentary councils; but it is evident from his remarks upon them that he did not believe, that there was any

well as they could, from future innovations by new grants, laws, and charters in their favour—they deliberated concerning the pecuniary aids, which were required of them from the King, both ordinary and extraordinary, and fixed the proportion of the assessment, according to their own circumstances, and the necessity of the conjuncture—they heard and decided (if they pleased) all such civil causes, as particularly related to their own fees<sup>b</sup>; nor could any member of this high court lose his life, limbs, or estate, but by sentence of his peers—if the King's superior officers and ministers abused their master's confidence, and betrayed the trust reposed in them, to the loss and oppression of the subject, and to the dishonour of the nation, this assembly had a right to call them to account for their crimes and misdemeanours, to judge, and to punish them for the same—appeals likewise

any thing in them favourable to their opinion, who argue for the existence of the commons before Edward I.

<sup>b</sup> So in a charter of Henry I. *apud Wilkins*, it is established, Si exurgat placitum de divisione terrarum, si interest Barones meos dominicos, tractetur in curia mea; et si inter Valvasores duorum dominorum tractetur in comitatu etc.

likewise from inferior courts of judicature were sometimes received, and the cause reheard by them\*. Nor was the number of these free, or military tenants of the King so great, as may, perhaps, be apprehended by those, who are apt to compare the present with antient times. For it incontestably appears from the record, which I have so often had occasion to quote, that there were not more than seven hundred of them in the whole realm, when that national register was made<sup>d</sup>. These alone, therefore,

\* Tho' the assembly of military tenants, or general Court-Baron of the kingdom, was the sovereign's standing council in all the extraordinary cases of government; yet, it must be observed, he had another council of a more private nature to assist him in the ordinary execution of his high office: whose particular business it was to prepare matters for the future deliberation of the Barons, and to superintend the royal interest in parliament; to regulate every thing, which related to the oeconomy of the King's family, both within doors and without; to inspect the regal finances in all its variety of branches; to receive the treasure, as it became due to the Exchequer, and to issue the necessary payments and disbursements; to decide all controversies, wherein the revenue was any ways concerned; to hear the complaints of the tenants in demesne, and to redress them, if their plea appeared just; to judge between the King's own domestics, and to determine the suits and controversies of all other persons, who had either interest or wealth enough to purchase a licence from the sovereign to bring their causes before his tribunal. This council was usually made up of the principal officers of the household, namely, of the *Chief Justicier*, the *Constable*, the *Marshal*, the *Chamberlain*, the *Chancellor*, the *Vice-Chancellor*, and the *Treasurer*; to whom were occasionally added such other persons,

fore, together with such prelates or ecclesiastics, as held their temporalities immediately of the sovereign, represented the kingdom, and constituted the parliament, or great council of the nation — For nothing, to me at least, seems more certain, than that the Vassals, Vavasors, or military tenants of the King's Barons, were never regularly present at these conciliary meetings, or had indeed any right to be there. For it is to the last degree absurd to suppose, that they could have any claim to  
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persons, whose skill in the laws of their country had rendered them worthy of the King's notice and favour—Only it may not be improper to remark, that these high personages were not regarded as the servants and ministers of the King, as he was the head of the nation, but rather in his private capacity, (if I may so term it) as he was the master of a large family and estate, which was subject to his jurisdiction alone.

<sup>4</sup> *Brady's Animadversions*, p. 170. The truth is, there were not in *William the Conqueror's* reign (as appears by an alphabetical catalogue made out of *Domesday-book*) 700 tenants *in capite*, besides Bishops, Abbots, Priors, and great churchmen, that held all the land in England of him; and all others, that had any estates, held of them by mean tenure; and therefore it seems not unreasonable to think, that they should be bound by the acts of those, of whom they held their estates—And tho' in process of time many of these estates and lands became free tenements, or were holden in soccage, that is, were freeholds, yet the lords retained homage, and by that a dominion over the estate, whereby upon disobedience, treachery, injury done to the lord, etc. the lands were forfeited to him etc. See, likewise, *Spelman's Remains*, p. 64. and *Glossar. Saxonum*.

be treated upon an equality with their lords; to look upon themselves as peers to their own proper superiors, and entitled to the same privileges; to sit in the same assembly with them, either as their judges, if it so happened, or even as counsellors of the King, to whom they owed nothing but allegiance. For this would have been to have confounded all order and decency, and to have utterly subverted the whole system of the feudal constitutions, where every barony, and every manor exercised both the high and low justice, as it is called, upon its own men and subjects; was governed by its own laws and customs; voted and proportioned its pecuniary aids to its own superior, and formed a sort of distinct kingdom of itself, with all the regalia and jurisdiction of the sovereign fee. Both the military and soccage tenants

• *Spelman's Remains*, p. 60. Every lord having this authority over his tenant, the superior, as comprehending them all, and holding [of the King] in capite, was tied to the King, to see all under his tenure to be of good government, good behaviour, and forth coming, whensoever they should be demanded to answer any misdemeanour—this appeareth by the laws of *Edward the Confessor*, where it is said—*Archiepiscopi, Episcopi, Comites, Barones, et omnes qui habuerint facam et socam etc. milites et proprios servientes, sc. dapiferos, pincernas etc. sub suo friburgo habeant*, that is, sub sua fide-jussione de se bene merendo—By reason whereof, whatsoever their lords agreed or disagreed unto  
in

tenants of the King's men or Barons owed suit, service, attendance, council and aid to their own superiors only. The King had very little, or rather no proper power, or authority over them; to their own head, or chief, and to their own peers they were accountable for their conduct, as their superior, on his part, was obliged to answer for their behaviour to the community.—The King, as such, was indeed intitled to their general allegiance, but he had no right to demand any money of them; nor would his writs or summonses reach or affect them, (except in extraordinary cases) otherwise than as special custom, or the express desire and permission of the superior had given them a currency upon particular baronies.—Nor was there any necessity or plea for the military tenants of the King's Barons to be present

in matters of the state and commonwealth, it did bind every of their inferiors, unto whom they themselves might then also appoint laws and ordinances in their own courts. Hence it came to pass, that in making the laws of the kingdom, the common people were not consulted with, but only the Barons, and those which held *in capite*, who then were called Concilium regni etc. See likewise our author's *Glossary* at the word *Parliamentum*, where the reader will find many other things alledged extremely to the purpose of this essay—See also *Madox, History of the Exchequer*, p. 74.

present at these assemblies, under the pretense of taking care of their own interest and concerns in them: seeing it is certain, that whatever fundamental privileges, charters, or relaxations of the severity of feudal tenure were introduced in the King's Court-Baron, were of course received and established, as nearly as could be, in all the inferior fees.

92. If I have hitherto taken no notice of the trading cities, towns, and burrows, since the Norman invasion, it is because they continued much in the same condition, in which they had formerly been under their Anglo-Saxon masters, regarded rather as parts and parcels of some private patrimony or estate, than as distinct members of the great community\*. For the Norman

\* *Madox Firma Burgi*, p. 4. It is to be remembered, that from the time of the Norman conquest downward, the cities and towns of England were vested either in the crown, or else in the clergy, or in the baronage or great men of the laity, that is to say, the King was immediate lord of some towns, and particular persons, either of the clergy or laity, were immediate lords of other towns"—in proof of which assertion our author produces many instances—*Madox*, *ibid.* p. 7. When a great lordship escheated to the crown, the demesnes thereof escheated with it. It consisted of seigneurage, homages, and services of military tenants and demesnes. *Towns and Burrows were ranked amongst the demesnes. Madox*, as above, p. 14. 15. When the King

Norman proprietor succeeding to all the rights and privileges of his predecessor, does not appear to have made any early alteration in their favour. He not only continued to appoint a bailiff or steward to govern his towns in his name, and to collect the rents, forfeitures, tolls, customs, and other dues, which constituted the ordinary revenue of his trading demesnes; but he moreover compelled them, as often as he was obliged to be at any extraordinary expence, either on the public or his own private account, to contribute their share towards it, by laying a tax upon their goods and chattels (as they had very little, or no, land of their own, upon which to levy it) taking a fifth, tenth, or fifteenth etc. of their stock, according to his own necessities,

King was seized of a city or town in demesne, he had a complete seisin of it with all its parts and adjuncts. He was lord of the soil, viz. of all the land within the site and precinct of the town; of all the burgage houses, sheds, stalls, and buildings, erected on the said land. He was lord and proprietor of the profits (if any) of aldermannries, the herbage and productions of the earth, profits of fairs and mercats, pleas and perquisites of court; in a word of all issues, profits etc. LL. Henrici primi apud Wilkins, p. 246. *Omnium terrarum quas Rex in dominio suo habet, Sokenam pariter habet.* See *Spelman's Glossary*, at the words *Soc* and *Sokenmanria*—See likewise p. 158. above.

ties, and their abilities to supply his wants. This manner of raising money upon the towns in demesne was called *talliating* them, and was due of right to the lord, as long as it was kept within reasonable bounds; tho' I cannot find, that it was ordinarily directed by any other law or rule during the reigns of the eight first Norman princes, than the discretion of the superior, guided by the advice of his privy council, a proper regard to antient custom, and his own interest not to ruin his towns by charging them with greater loads than they could easily support. These tallages were frequently fined, or compounded for  
between

• *Brady's Animadversions upon Jani Anglorum facies nova.* fol. p. 179. After quoting a passage from *the Black Book of the Exchequer*, our author observes, that the usage in the time of Henry II. was, that either the *King's Justices* taxed the cities and burrows; or the cities and burrows offered a sum to the justices, which oft-times was accepted: in both these cases there was a different way of forcing the payment of it etc." To the same purpose, *Madox History of the Exchequer*, p. 504. In the most antient times, the tallages were usually imposed and set by the Justiciars of the King's court; or the Justices itinerant in their respective iters, and afterwards by commissioners appointed by the King for that purpose. *Id.* p. 500. When a town was tallaged, the tallage was raised upon the men of the town—who belonged to the Gild, and made merchandise in the town—*id.* p. 506. In the most antient times, after the tallages had been assessed, they were usually collected by the Sheriffs of the several counties etc. *id.* *ibid.* These tallages were wont to be assessed  
upon

between the tenants in demesne and their sovereign at a certain sum of money, greater or less, according to the emergency, and the amount of the demand; and in such cases, the manner of collecting the tax was wholly left to the regulation of the townsmen and their own officers: but when it was not previously compounded for, it was always levied upon the individuals of the place by persons expressly appointed by the King's writ for this purpose, whether they were his sheriffs, bailiffs, or justices itinerant etc<sup>b</sup>.—Such a power, as is here taken notice of, when committed to the management of the inferior

upon the men of the demesnes and towns, sometimes in gross (in communi) sometimes by poll, per capita, or per singulos; at other times partly one of these ways, and partly the other. *Madox*, ut supra, p. 511. Sometimes men (sc. particular persons) were admitted to compound for the tallage imposed upon them, by paying a fine to the King for the same. id. p. 512. Tallage was not demandable for lands holden in *Eleemosyna*, or Frank-almoign—nor chargeable upon lands holden by Knight's service. p. 513. Moreover, the King, if he pleased, granted to particular persons a freedom from tallage:” all which positions our author abundantly proves from the most authentic records—I have been the more copious in transcribing these passages to convince my reader, that these tallages (tho' paid so frequently by the commonalty of the realm under our antient kings) were not parliamentary aids, but depended entirely, in all their circumstances, upon the will and pleasure of the sovereign and his privy council.

<sup>b</sup> *Madox*

ferior officers of the crown, would, it is easy to be imagined, be liable to considerable abuses, be a great discouragement to the progress of commerce, and afford much room for exactions, partialities, and complaints — but there was no place for redress. The only application which the men of the suffering towns could make for relief was to the King and his privy council ; but they were likely to receive no great ease from a jurisdiction, by whose advice and authority the tallage, it is most probable, was originally demanded.

93. It is natural, therefore, to suppose, that the cities, burrows, and towns in royal demesne (for of such only, both as they were the most numerous, and as they were the wealthiest in the kingdom, the intention of the present discourse requires me to speak) — it is, I say, natural to imagine, that the inhabitants of these places would omit no opportunity, which the season offered, either entirely to free themselves from the weight of burthens, which so heavily oppressed them ; or, at least, to  
endea-

• *Madon Firma Burgi*, p. 21. When a town was put to Fee-

endeavour to render the yoke of dependence as light and easy as possible, by introducing proper limitations and restrictions to the power, which the sovereign exercised over them — And accordingly it appears from a series of authentic records still extant, that many of these trading towns, taking advantage of the various troubles and necessities of the princes, who followed the Conqueror for several successions, — it appears, I say, from authentic records, that some of these trading towns for large sums of money, others for special service and assistance upon some important and critical conjuncture, and others again for other valuable considerations, purchased and procured, at different times, from the favour of the sovereign, charters or deeds of exemption, which in lieu of a sum of money to be laid down immediately as a fine, and of a certain yearly rent to be for ever paid at the Exchequer, under the name of a Fee-ferm rent, released them from all other services formerly and of custom owing to the King — surrendered to them all tolls, duties and  
 imposts

ferm the tenure of it was burgage: as well particular burgage-

imposts arising from their town, which they were left hereafter to collect and apply to their own profit in what manner they pleased; gave them a license to buy and sell freely without disturbance; and, by delivering them from a foreign jurisdiction, made them, as it were, their own masters, suffering them to be governed by their own laws, courts, and officers<sup>b</sup>. Those places in demesne, which had found means to obtain these grants or charters of immunities from the crown, were afterwards stiled *Free Cities*, *Burrows* etc. to distinguish them from such other demesnes of the King, as still continued obnoxious to their antient charges, services, and incumbrances.

94. But

tenements lying in the town, as also the town itself were said to be so holden. See the *History of the Exchequer* by the same author, p. 230.

<sup>b</sup> See appendix to *Brady's Treatise of Burrows*, No. 1. *de Burgo Magnae Iernemu* [Yarmouth] and the treatise itself, p. 19.

“ By understanding wherein the liberty of Free Burghesses consisted, we come to know what men they were, to wit, buyers and sellers, ordinary and common tradesmen (then called merchants) such as are commonly found in ordinary inland burrows and mercate towns, such as frequented fairs and markets etc. and it may be observed in general, that all estates, which were held under a Fee-ferm rent (*ad Feodi Firmam*) were reputed free, and the tenants looked upon as free men. These estates descended to heirs general—the *Feodi firma* exactly answered to the quit rent reserved

94. But here it is very material to take notice, that tho' many of the towns in antient demefne were by the means above-mentioned become free, and had, in a great meafure, emancipated themselves from that absolute and illimited state of fubjection and dependency, wherein the fovereign had formerly poffeffed them; yet, that they ftill continued liable to have their goods and chattels talliated by his fole authority upon all preffing emergencies, certainly as often as the military tenants of the crown laid any tax upon themselves, which was not immediately incident to their fees, as no tax upon their moveables, or perfonal eftates was\*. For this privilege of raifing money upon the demefnes was of  
too

referved in the grant of leafehold eftates—See notes ad feft. 95. hereafter; and above at feft. 89.

\* The method of taxing the moveables, or goods and chattels, of the Barons, or military tenants of the crown, was firft introduced either at the latter end of *Henry II.* or the beginning of *Richard I.* reign. The pretense of this novel impofition was to raife an extraordinary fupply for the relief of the Holy Land, at that time in the poffeffion of the Saracens—But the romantic valour of King *Richard*; the ufurpation of *John*, and the vain profufion of *Henry III.* having greatly diminished the ordinary revenues of the crown, there was little elfe left to fupport the dignity of the regal character at home, and to maintain the credit of the nation abroad, but the frequent and voluntary aids, gifts, and affiftances of the fubject.

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• *Madox,*

too great importance to the dignity and power of the crown to be easily parted with; and accordingly we find it expressly excepted in some of the charters granted to the free-burrows; and where there is no mention at all made of this matter, it was always understood to be excepted. For the merely constituting a free-burrow did not deprive the king of his right of seignery over the place,

\* *Madox, Firma Burgi*, p. 37 etc. In antient times, little difference was made (for ought that I have observed) between a populous town, that was gildated or incorporated, and one that was not gildated and incorporated, as to the following points, namely, *perpetual succession, holding the town at ferm, and as to paying their aids, tallages, common fines and amerciaments.*—*ibid*, p. 242. The Kings of England made their towns Free-Burrows *ad cremenium*, or *meliorationem villae*: that is to say, to amend and improve the town; to enable the townsmen to live comfortably, and pay with more ease and punctualness their yearly *ferm*, and other dues to the King. *Id.* p. 248. When the King by his charter, or patent letter, granted privileges, or confirmation to any of his towns, there was frequently added a clause of saving to the King the ferm, and the accustomed aids and tallages; or, if such saving was not expressed, it was to be understood. For the ferm of a town was the King's inheritance; and the crown could not be divested thereof, without express words of grant, or release. (See likewise the same author's *History of the Exchequer*, p. 502. 514.) The Barons of the Exchequer, *tempore Edwardi secundi*, declared, that tallage of the King's antient demesne is a right annexed to the crown of England; and cannot be separated from the crown, but by special deed making express mention of it."—The common liberties of a town (says the same author, p. 279.) were such as these, to be a Free-Burrow; to have a free trade; to hold their town at ferm, that is, to receive all the issues of their town to their own use, and to pay the King a yearly rent for the same; to answer to the King for his dues,

place, nor exempt the burgesſes from ſuch payments, as had been formerly due to him, unleſs they were ſpecially included by name<sup>b</sup>. For whilſt the burrow continued to enjoy the immunities, which had been granted to them by their lord and patron, and to grow wealthy out of the profits, which accrued to them both from the general liberty of trading, and from  
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dues *per manum ſuam*, by their own mayor, bailiff, or other compeer, without being ſubject to the diſtreſs or coercion of the ſheriff of the county, or other rough and powerful officer ſet over their town; to have a mayor, bailiff, and other officers to be choſen out of their own body; to have a common ſeal, a town hall, a mace, fine gowns and other gaieties; to have return of ſummonſes and other writs; capacity to purchaſe lands to the common uſe of their town, and capacity for particular burgesſes to bequeath or deviſe burgage-houſes, or lands by their laſt will, and many more liberties"—But certainly had our very diligent antiquary found the privilege of ſending members to parliament amongſt the antient liberties, either due of right, or granted by charter, to the Free-Burrows, he would have thought it too important not to have deſerved a particular mention to be made of it. *Brady's Treatiſe of Burrows*, p. 47. From the inſtances, which have been produced, we may make a more than probable conjecture, that all *Free-Burrows*, tho' now ever ſo obſcure, had their beginning from charter, which was granted as well for the advantage of the King, Earl, or other great man, lord of the Burrow, as for the profit of the Burgeſſes themſelves. For a *Free-Burrow* in the true ſenſe of the word, was only a town of free trading, with a merchant gild or community, without paying toll, pontage, paſſage, ſtallage, etc. and being free from certain fines or mulcts, from ſuit to hundred, and county courts, or being proſecuted, or anſwering there or any where elſe, but within their own burrow, except in pleas of the crown, with other privileges, liberties, and cuſtoms, according to the tenor of

the tolls, dues, and customs, of their town, which had been conceded to them; nothing was thought more equitable, than that they should continue to contribute, upon all proper occasions, a reasonable aid to the support of his dignity, to whose bounty they owed all their privileges; and to pay a proportionate share of their income to the common defence of that state, under whose protection they were allowed to carry on their traffick in the most advantageous manner to themselves. But as these free demesnes were not yet looked upon as members of the community, but regarded merely as a part of the private estate or patrimony of the sovereign, the court-baron, or great council of the nation, (which usually took cognisance only of what related to themselves; that is, to their own rights, privileges, and immunities) left the whole consideration of these tallages, both with respect to the  
time

particular grants and charters etc."—It wants not probability, (I use the words of the same author in p. 18. of the above-mentioned treatise) tho' it manifestly appears not, that *William Rufus*, *Henry I.* and *King Stephen* being all usurpers, granted large immunities to Burrows to secure them to their party." See *Du Fresne Gloss.* ad voc. *Commune*, where it is observed, that the

time of levying them, and the proportion of the assessment, to the wisdom of the king and his privy council — having no more pretense to interfere with the sovereign in what related to the conduct of his estate, than the sovereign had (in ordinary cases) to intermeddle with them in the management of their private demesnes. — The king, indeed, was always ready to throw in the royal weight, and to issue out the proper precepts to the sheriffs and other officers of the crown, if the barons required his help to assist them in collecting what was due to them from their men; nor was the court-baron, on its part, desirous of putting any extraordinary restraints upon the power of the sovereign, in talliating the men or tenants of his demesnes, as they hereby greatly lightened the burthen, which must otherwise have fallen with its whole weight upon their own shoulders, and gave them moreover  
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the trading communities in France owed their origin to a political view in the prince, to check the insolence and over-great power of their vassals etc.

\* *Brady's Animadversions*, p. 179. *King Richard the First* and *King John* taxed the whole kingdom without common assent, before the grant of *Magna Charta*; and *Henry the Third*, several

a pretense to exact a like aid from their tenants.

95. It will not, therefore, be difficult to conceive, that this arbitrary manner of levying money upon the men of the trading towns, and tenants in demesne, must not only be greatly detrimental to the general interest of trade, and occasion continual murmurs, uneasiness, and complaints, in such as were obnoxious to these frequent and severe impositions ; but likewise produce very prejudicial delays in the dispatch of the king's affairs, and in transacting the business of the nation, which could not be carried on with vigour and effect without plentiful supplies regularly and seasonably paid into the royal exchequer. For tho' the sovereign's right to demand a pecuniary aid of his demesnes upon extraordinary occasions, of which occasions custom had hitherto made him the only judge, could not be denied ; yet it was very easy and obvious for the oppress-

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times after this charter was granted ; and *Edward the First*, taxed *their demesnes* thro' England by advice and consent of their privy councils only—And this right itself was acknowledged by the Barons in the 33d of Edward I. as appears by their petition to him in parliament, *Ad petitionem Archiepiscoporum, Episcoporum,*

ed tenants both to object to the proportion and reasonableness of the sum imposed upon them, and to complain of the hardship of having a tenth, or fifth part perhaps, of their whole property forced from them, upon oath, by persons who knew nothing of their real circumstances, and under the terror of being immediately deprived of their privileges, unless they punctually complied with the demand. The military tenants of the king, they would plausibly urge, might be as liberal, as they pleased, out of their own substance; their funds were large and certain; they had been consulted by the prince; had been made judges of the necessities of the community, and, as far as concerned themselves, had fixed the proportion of the assessment, making the tax, by the solemn assent, which they had given to it, their own act and deed—whereas the men of the demesnes, who had little else to support them, but the precarious profit of their

*rum, Prelatorum, Comitum, Baronum, et aliorum proborum hominum de terra, petentium, quod Rex concedere velit, quod possint talliare antiqua Dominica, unde sunt in tenancia, desicut Rex dominica sua talliavit, ita responsum est; fiat ut petitur etc.*—See likewise the same author's *Treatise of Burrows*, p. 24.

their skill and industry, the produce of their husbandry or the gain of their trade, were left to be cut in pieces at the will of a capricious minister, or favourite; and, unless they immediately submitted to the exaction, however unreasonable and exorbitant, by coming to a composition with the king's officers, were moreover liable to have their whole effects valued, and to lie at the mercy of rapacious tax-gatherers, without knowing where to apply for an effectual redress of their grievances. Whilst these tallages were rare, and seldom imposed but upon the most urgent emergencies of the sovereign, as they owed their whole substance to the liberty, which they enjoyed of living upon his demesnes, and to the immunities, with which he had guarded their trade, they had been always ready, as in duty bound, to contribute a reasonable part of the profits, in return, to the relief of his necessities, and to the advancement of his power and dignity—but  
to

\* See *Brady's Treatise of Burrows*, p. 31. In the twenty second year of *Edward the First*, Philip king of France having surprized and seized Gascony, a parliament was assembled in order to furnish supplies for the recovery of it—but the *Cities*,  
*Burrows*,

to have their property torn from them without waiting for their previous consent, (as was sometimes the case) in order to carry on wars, in which they were not interested, and to support measures the expediency of which they were utterly unacquainted with, was still looking upon in the light of slaves, and treating them with little less than injustice.

96. The force and justice of these complaints, added to the urgent necessities of the crown, and to the great difficulties, which were continually experienced in persuading, or compelling (as was however requisite) every particular town in demesne to comply, without respite or mitigation, with the sovereign's encreasing demands, (for any act of the city of London, for instance, with respect to the proportion of an aid to be hereafter collected upon the king's demesnes, could not bind the citizens of Norwich<sup>a</sup>, or have any other effect upon them, than as it served for an example;

*Burrows, and Tenants in Demesne*, not being as yet summoned to come to these general councils [tho' they were the year following] were required, and induced by the King's commissioners or taxers, to pay a certain sum charged upon, or demanded of them;

ple, or precedent, which they might be exhorted to follow) drew on, by degrees, an obvious, natural, and, indeed, necessary alteration in the antient constitution of the kingdom; and laid the foundation of an innovation, which has been since attended with the most important and interesting consequences to the whole realm. For in order to remove, as far as possible, all future occasion of uneasiness and discontent from the royal cities, towns, and burrows, at least, upon this head; and at the same time to provide more easily, as well as expeditiously, for the effectual defence of the state, the seasonable relief of the king's necessities, and the speedy dispatch of the public business, it was thought expedient

them: which at this time was a sixth part of all their moveable goods, towards the war. The city of London was first sent to, and accordingly complied with the King's demands—and after the example of London the King sent his commissioners to tax or demand of his other demesne cities, and towns, a sixth part thro' England. “Rex dilecto et fideli suo Roberto de Ratford, salutem. Cum cives et probi homines nostri de London, sextam partem bonorum suorum mobilium nobis in subsidium guerrae nostrae grateranter concefferint, ut aliis, qui sunt de nostris Villis Dominicis, exemplum praebeant ad consimile subsidium faciendum, assignavimus vos ad petendum hujusmodi sextam partem in singulis dominicis civitatibus et aliis villis nostris in communitatibus Kanciae, Suffex, Surry, et Southamton secundum taxationem decimae, jam nobis in regno nostro concessae—et ideo vobis mandamus, quod assumptis vobiscum Vicecomiti-  
“ bus

pedient (by the advice, as is most probable, and at the request of the lords and great men<sup>b</sup>) to summon the citizens, burgesses and tenants in demesne, by their deputies, to appear before the king at the same time, when the prelates and barons were convened to meet him in a parliamentary assembly—that being made acquainted with the imminent danger, which the nation was in from the threats of the French king, either by the sovereign himself or by some other person immediately authorised by him, they might be sooner induced to give a speedy and effectual aid suitable to the occasion—that being treated as distinct and independent members of the community, and made judges of the neces-

“ bus locorum, ad singulas dominicas civitates, et alias villas nostras personaliter accedatis, et homines earundem civitatum et villarum ad concedendam et præstandam nobis prædictam sextam partem juxta taxationem prædictam, diligenter ex parte nostra requiratis, et efficaciter inducatis, modis quibus videbitis expedire. Et quod inde feceritis nobis, aut thesaurario et Baronibus nostris de Scaccario sine dilatione constare faciatis etc.”—Like letters from the King were sent to other persons to ask and collect a sixth from the demesnes in the other counties. “ By all these records, says *Brady*, it is most clear, that there were no citizens, burgesses or tenants of the King’s demesnes summoned to great councils or parliaments, until the 23<sup>d</sup> of Edward I. and also how they were taxed before that time.

<sup>b</sup> See *Brady’s Answer to Petit*, p. 149. fol.

necessity of the supply, which was demanded of them, they might the better know how to proportion the tax, which they were to make themselves parties to the grant of, with a proper regard to the emergency on one hand, and to their own abilities on the other.

97. To this purpose, therefore, in the twenty-third year of *Edward the first*, proper writs were issued, and directed, in the name of the sovereign, to the sheriffs of every county in England, commanding them, that at the same time, when they summoned (as usual) the greater barons to be present, every one of them in person, at the ensuing parliament; and the lesser barons,

\* *Spelman's Remains*, p. 64. It seemeth, that those of the counties, whom we call *Knights*, served not in antient time for all the free-holders of the county, as at this day they do, but were only chosen in behalf of them, that held of the King in capite, and were not *Barones majores*, Barons of the realm. For all free-holders besides them had their Lord Paramount (which held in capite to speak for them) as I have shewed before; and those only had no body, for that themselves held immediately of the King. Therefore King John by his charter did agree to summon *them only*, and no other free-holders; howbeit those other free-holders, because they could not always be certainly distinguished from them that held in capite (which increased daily) grew by little and little to have voices in election of the Knights of the shire, and at last to be confirmed therein by stat. 7 Henry IV. etc." Our author had observed before, p. 62. that about the  
twenty

barons, or military tenants in chief, to appear there by two deputies chosen by themselves out of their own body\*—they should, moreover, send their precepts to every city, burrow, and town within their respective jurisdictions, strictly charging them, likewise, each place for itself, to elect two able and sufficient persons out of their body, and to furnish them with full powers to represent, act, and determine for them at the ensuing parliament—and that the king's business might proceed, and meet with as little delay as possible, the sheriffs were also commanded to require, and take sufficient sureties from such persons, as were chosen agreeably to such

twenty second year of Henry II. a notable alteration happened in the commonwealth. For the great lords and owners of towns, which before manured their lands by tenants at will, began now generally to grant them estates in fee, and thereby to make a great number of free-holders more than had been; who by reason of their several interests, and not being so absolutely tied unto their lords, as in former times, began now to be a more eminent part of their commonwealth, and more to be respected therefore in making laws to bind them and their inheritance."——It not falling within the first intention of this essay to treat particularly of the origin of the *Knights of the Shire*, and of the manner of their acquiring a seat in parliament—I thought it would not be disagreeable to the curious reader to insert the above abstract at the bottom of my page, taken from one of the most sagacious and industrious enquirers into our English antiquities.

Spelman's

such summons, that they would personally appear at the time and place mentioned in the writ, there to perform the service required of them—Here then, as it seems to me, was first added a new member to the great community ; and at this time was laid the foundation of another order in the state, hitherto unknown, under the name of the *Commonalty*, or *Commons of England*. The *Commons of England*, originally, were none other than the deputies of the men of the cities, towns, and burrows in royal demesne, called together in virtue of that almost absolute authority, which every lord exer-

\* *Spelman's Remains*, p. 64. Our Burgesſies, as it ſeemeth, in time of old, were not called to conſult of ſtate matters, being improper to their education ; otherwiſe than in matters of aid and ſubſidy. *Brady's Treatiſe of Engliſh Burrows*, p. 25. The firſt time we find any Citizens or Burgeſſies ſummoned to parliament was in the 23d year of Edward the Firſt, according to the tenor of this writ. “ Rex Vicecomiti Northampton ſalutem. “ Quia cum Comitibus, Baronibus, et caeteris proceribus regni noſtri ſuper remediis contra pericula, quae eidem regno his diebus imminent providendis, colloquium habere volumus et tractatum ; per quod eis mandavimus, quod ſint ad nos die dominica proxima poſt feſtum Sancti Martini in hyeme proxime futurum apud Weſtmonaſterium ad tractandum, ordinandum, et faciendum qualiter ſit huiusmodi periculis obvian- dum—Tibi praecipimus, firmiter injungentes, quod de comitatu praediſcto duos milites, et de qualibet civitate ejuſdem comitatus duos cives, et de quolibet burgo duos burgenſes de diſcretioribus et ad laborandum potentioribus ſine dilatione eligi, “ et

exercised in his own estate ; and obliged to obey the royal mandate, not because it came from the king, as head of the nation, but because it was sent to them by the authority of their own immediate patron, lord, and protector — They were summoned to the court-baron for no other purpose, at first, than merely to remedy the difficulties and inconveniences, which had attended the antient method of talliating them<sup>b</sup>; to consider jointly, to treat, and to deliberate of a reasonable aid to be given to the sovereign out of their moveables, on account of an invasion which was threatened from France; to fix the proportion of the future

“ et eos ad nos, ad praedictos diem et locum, venire facias, ita  
 “ quod *dicti milites* plenam et sufficientem potestatem *pro se et*  
 “ *communitate* comitatus praedicti; et *dicti cives et burgenſes*  
 “ *pro ſe, et communitate civitatum et burgorum praedictorum*  
 “ *diviſim* ab ipsis hunc ibidem habeant — ad faciendum hinc  
 “ quod *de communi confilio* ordinabitur in praemissis. Ita quod  
 “ pro defectu huiusmodi potestatis negotium praedictum inſec-  
 “ tum non remaneat quoquo modo etc. Teste Rege.” *Brady*  
 as above, p. 33. and according to the addition made in the writ of summons, when the citizens and burgesses came first to parliament, there was also an alteration made answerable to it, in the writ or commission in appointing taxers and collectors for the sums hereafter granted by the citizens and burgesses.” See one of the new commissions transcribed by our author, who goes on, “ the summons to this parliament directed to the Archbishop of Canterbury, is very observable, and may furnish us with the reason, why the king summoned the cities and burgesses to it.” “ Rex venerabili in Christo patri etc.—Sicut lex  
 “ iustissima

ture assessment; to settle the time of payment; and to bind themselves and their principals to a punctual compliance with what should be agreed upon by the majority in the general assembly. Had the men of the royal demesnes pleaded either a prescriptive right to have been present at our Anglo-Norman parliaments in person, or by their representatives; or had this privilege (as we now term it) been first granted to them as a mark of honour or especial favour, which they had sought after, were well pleased with, and which was known to have been agreeable to their inclinations, there would, certainly, have been no occasion or pretense for so strictly demanding a  
caution

“ justissima provida circumspectione sacrorum principum hortatur et statuit, ut quod omnes tangit, ab omnibus approbetur, sic et innuit evidenter, ut communibus periculis per remedia provisa communiter obvietur. Sane fatis nostris, et jam est, ut credimus, per universa mundi climata divulgatum, qualiter rex Franciae de terra nostra Vasconiae nos fraudulenter et cautelose decepit, eam nobis nequiter detinendo—Nunc vero praedictis fraude et nequitia non contentus, ad expugnationem regni nostri classe maxima, et bellatorum copiosa multitudine congregatis, cum quibus regnum nostrum, et regni ejusdem incolas hostiliter jam invasit, linguam Anglicanam, si conceptae iniquitatis proposito detestabili potestas correspondeat (quod Deus avertat) omnino de terra delere proponit. Quia igitur praevisa jacula minus laedunt etc” The treating, ordaining and appointing remedies to prevent the imminent dangers

caution for the appearance of their deputies in parliament, on the one hand; or for their being obliged to give such security, on the other. The whole transaction between the sheriff and the king's men seems, at the beginning, to have been entirely compulsory, and of the nature of a bond, which the citizens, townsmen, and burgessees in demesne were compelled to enter into, in order to secure their compliance with the royal demands, and, in case of non payment of what they had assessed upon themselves, to furnish the proper officers with authority to distrein upon their goods and chattels, and to collect what was become a just debt to the sovereign.

## 98. The

gers to the kingdom, says Brady, was only to raise money, to prosecute the war, and defend the nation against the king of France—There were no laws made, or other matters dispatched in this parliament. See likewise the same author's *answer to Mr. Petit*, p. 154 et seqq. I have taken no notice of the 49 *Henry III.* tho' this has been frequently looked upon as the era of the representation of the commons of England, both on account of the terrible civil wars, which, then, divided the nation, and, likewise, because, the manner of summoning the cities and burrows, at that time, was different in many respects from what was afterwards followed. I might urge as another reason for my omission, that *Henry III.* never afterwards summoned the cities and burrows to his parliaments, and that the precedent was entirely neglected by his son, till the 23d year of his reign.

98. The commons, therefore, if the description, which I have here given of their original be just, could not, (I humbly conceive, with all due deference to the opinion of those, who dissent from me) be regarded, upon their first institution in the reign of the abovementioned Edward, as an essential part of the court-baron, or parliament of the kingdom—and, agreeably to this sentiment, tho' they were commanded by the writ of summons to meet together at the same time and place with the military tenants of the crown (in order to avoid giving the king and his ministers a double trouble); yet did not the period of their sitting, or continuance in parliament, depend at all (I mean originally) upon the business which was transacted in the other house, as we should now call it: but having soon agreed upon the supply, and proportioned it to the occasion, which had called them together, they were immediately suffered, for their own ease, to depart to their homes. Many years, indeed, were not passed before the continual and pressing necessities of our princes had taught the commons their growing importance;

importance ; and made them feel of what consequence they were become, in being consulted as a distinct and independent member of the state, and permitted to deliberate upon what taxes should hereafter be raised upon them. For whoever has any thing considerable in his power to dispose of, will always be sure to be much courted, and to have his requests (as far as conveniency will suffer) complied with, by those who stand in need of his favours, or have any expectations from him. In return therefore for the large sums of money, with which the commons were frequently called upon to supply their royal master's demands, they took the liberty humbly to petition him for the redress of such grievances, as lay most heavy upon them ; and to pray him, likewise, to correct those errors of his ministers and servants, (when there was occasion) which especially tended to the abuse of justice, the waste of the public treasure, and the dishonour of the kingdom. Such articles of these petitions, as were approved of by the king, were from time to time reduced into statutes or ordinances by his own lawyers and privy council ; till by

degrees the power and influence of the commons became great enough, to make their consent absolutely requisite to all such acts of state, as were intended to be binding to the whole community\*. Such a house of commons, however, as is above described, consisting altogether of the tenants and dependants of the crown, and having very little property, but what was personal, could be of no great force and authority in the parliamentary deliberations of those early times—till they had found means to encrease their substance by an extended commerce, and the purchase of those lands, which had formerly thrown the preponderating weight into the scales of the great military tenants and the clergy.

99. If

\* Acts of parliament were not originally drawn up by the estates of parliament themselves, and regularly read to them a certain number of times, before they were assented to; but each of the orders of the realm, having finished the king's business, for which they were immediately convened, afterwards presented their own resolutions separately to the sovereign in a series of petitions, praying him to give them satisfaction in what they humbly demanded of him. Such articles of these petitions as were approved of, and assented to by the king, were afterwards reduced into the form of statutes by his own lawyers and council, and published under his sole authority. But this manner of proceeding being liable to be much abused, as it yielded a favourable opportunity to the framers of these laws to give them a quite different turn  
from

99. If the account, which has been here given of the origin of free cities, towns, and burrows, and of the motives, and first occasion of their sending deputies to the Anglo-Norman parliaments, be agreeable to historical truth—it necessarily follows, that no city, burrow, or town, but such as had been formerly the demesne of the crown; or such as actually was so at the time of issuing the precept, either by prescription, or by being in the temporary wardship of the crown; or which had been purchased by it; or had escheated to it, by the death, felony, or cession of the former proprietor, would be summoned to these national councils—and that all such in general, whether little  
or

from what they were originally intended to have—this drew on a petition from the commons, in the beginning of Henry Vth's reign, desiring this prince, "that fro this time forward by com-  
"pleint of the comens of any mischief, asking remedy by the  
"mouth of their speaker for the comens, oather else by peti-  
"tion written, that there never bee noo law made thereupon,  
"and engrossed as statut, and law, neither by additions, neither  
"by diminutions, by noe manner of term, ne termes, the which  
"shold change the sentence, and the intent axked by the spe-  
"ker mouth, or the petition by foresaid yeven up in writing by  
"the manner foresaid without assent of the foresaid comens  
"etc"—To this petition, the king's answer was, "that he  
"of his grace especial graunteth, that fro henceforth, no-  
" thing

or great, or whatever was the ordinary occupation of the inhabitants, would be intentionally included in the royal mandate to the sheriff. For what circumstances were there, which could make any difference between them in this material respect? they were all equally related to, and dependant upon the sovereign; they were all reputed as parcels of his estate; and, notwithstanding their different privileges in other matters, all equally obnoxious to be talli-ated by him, when his necessities called for a supply; they all owed him the same obedience, attendance, and assistance, whenever their pecuniary aid was properly demanded—nor consequently can any sufficient

“ thing be enacted to the petition of his comun, that be contrary of her asking, that they shulde be bound without their assent etc” See *Brady's answer to Petit*, p. 85.

▪ *Brady's Treatise of Burrows*, p. 35. What cities and burrows sent citizens and burgesles to parliament? the answer to this is very short, that they were only the king's demesne cities and burrows, such as had charters from the king etc. id. p. 36. But besides the king's demesne cities and burrows, there were antiently, and are yet many towns, that sent their representatives to parliament, which were not burrows, but only towns of antient demesne, and these (in the granting of taxes especially) consulted and gave their consent with the citizens and burgesles etc.” this our author fully evinces by the records produced by him, which I would advise the reader to consult, if he has any doubts upon this subject. See however appendix, N<sup>o</sup>.

ficient reason be assigned, why some of these towns in demesne should have a new burthen laid upon them, as attending the court-baron from the most distant parts of the kingdom was most certainly reputed to be at that time, and others be excused and exempted from bearing their common share of the burthen'.—With regard to the other towns or burrows, which still continued in the demesne of private lords, or proprietors, there could be no pretense for summoning them to appear in an assembly, the professed purpose of whose meeting was to consult and deliberate with the king's tenants and men, about a reasonable aid to be given to the prince  
out

16. to the abovementioned treatise.—It appears farther from the record transcribed by *Brady, Appendix* N<sup>o</sup>. 12. 13. that in the 34 Ed. I. the citizens, burgesses, and tenants in antient demesne consulted together, and apart from the prelates, earls, barons, and *knights of the shire*—*Brady*, p. 38. Some time after the second of Edward the Second, the tenants in antient demesnes were left out of the preambles of the commissions; and not mentioned as grantors of taxes with the citizens and burgesses in the 12 of Ed. II.—in some commissions they were retained, in others omitted.—But afterwards they were frequently omitted, and after 8 Ed. III. when the establishment of taxes upon personal estates became certain, and the way and manner of levying them was changed, the tenants in antient demesne are no longer mentioned in the commissions of the taxers and collectors, as grantors of those taxes."

out of their goods and chattels—these places therefore, however considerable they might be, either for their wealth or the number of their inhabitants, were still looked upon (even after many of them had obtained charters from their owners for erecting them into free burrows, with all the commercial privileges which were enjoyed by the king's burrows) as under the dominion, or in the dependance of their former superior; and for this reason liable to be talliated by him, whenever his necessities demanded an extraordinary assistance from the men of his demesnes—for a charter given by a private lord, erecting such or such a place of his demesnes into a free burrow (and no burrows were reputed free, in those days, which had not such charters to produce in proof of their pretensions) no more exempted the burgessees of that town

<sup>b</sup> *Madax History of the Exchequer*, p. 480. There were two sorts of tallages; the one paid to the king, the other to a subordinate lord. *id.* p. 519. As the king had divers ways of raising money upon his demesne-men; so inferior lords, if I have observed right, dealt with their demesne-men after the like manner.—The tallages and duties formerly rendered to inferior lords by their demesne-men are not easily discovered by us at this day, the same having in a great measure passed under privacy and silence—but one would be apt to think, that private lords were want

town from being hereafter talliated by him, (unless such exemption was expressly included) than it did in the case of the royal burrows<sup>b</sup> — We may, therefore, I presume, safely venture to assert, that in the early times, which we are now considering, even the sovereign himself had no more a right to command the trading or foccage tenants of any other lord to appear before him, merely to deliberate concerning an aid to be hereafter given to him, than he had to send a writ of the same nature to the military tenants of his barons — no person unless he held under two or more lords, could owe suit, service and attendance to more than one court, which was that of his immediate superior — nor was it as he was their king, that is, as lord of the fee of the kingdom, and in virtue of the allegiance which they owed to

wont to treat their talliable men with greater severity, than the king treated his. For sometimes the men claimed by inferior lords have chosen to be talliable to the king, rather than to such lords; and accordingly have come to the king's court, and alleged there, that they were talliable to the king, and not otherwise etc." The case of the burrow of St. Albans mentioned in the text, has been thro'ly considered by our diligent enquirer, and the plea of the burgesse shewn to be without the least shadow of foundation from authentic records, *ibid.* 520. 522.

to him as such, that the sovereign commanded the inhabitants of his own burrows and demesnes to send their deputies to his court ; but as he was the particular owner, and undoubted proprietor of the district, upon which they lived and were permitted to exercise their several occupations—and therefore the burghesses of the town of St. Albans, in the time of Edward the second, in order to emancipate themselves from the jurisdiction of their abbot, whose men they were, pretended, that they held their town of the king in chief, by the service of sending two of their fellow-burghesses to the parliament, as often as the other burrows of the kingdom were summoned upon that occasion ; adding moreover, that they had actually sent their deputies to parliament in the days of the king's progenitors, tho' the sheriff of Hertfordshire had, at the time, when they made their complaint, refused to send them the proper writ—Had their plea been good, that they had always regularly attended the parliaments, whenever the other towns and burrows were summoned upon that service ; they could not have made use of a more convincing argument to prove, (which seems to have

have been the only reason for their urging so bold, and entirely unsupported a claim) that they belonged to the king, as part of the royal estate, and not to the prelate, who claimed them, as his demesne men.

100. The deputies from the royal demesnes, agreeably to the tenor of the original writ, and to the first occasion of their summons, being obliged to be of the same body or community with the persons in whose stead, and for whom they were chosen to act, (for the men of Norwich, for instance, could not represent, or give away the money of the men of Lynn; nor could the tenants by military service, or freeholders, dispose of the property of either, being an entirely distinct order in the state, and having no right nor claim to tax any other rank of people but themselves) would be justly entitled to have all their reasonable expences discharged by those, in whose name, and upon whose account, they were forced to undertake so troublesome a service. On the part of the burrows, as I have above observed, the whole proceeding seems to have been, at first, entirely compulsory — upon the

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receipt

receipt of the sheriff's writ they could not avoid obeying its contents ; the deputies chosen by them were likewise under a necessity (unless prevented by ill health, or some other approvable cause) to bear the common burthen, which was laid upon them by their brethren, and to find sufficient securities under a heavy penalty, that they would appear in person at the time and place appointed ; and lastly, by a subsequent writ issued in the king's name, their constituents were compelled to discharge all such reasonable expences, as their representatives had incurred, during their attendance upon the king's business—the whole transaction indeed, agreeably to the idea which has been here given of it, originally depended altogether upon the good will and pleasure of the king and his privy council. At his command, and for his service, the representatives of the royal burrows were first called together ; he fixed the number of representatives which each town was to send, and settled the time and place of their convening—if any burrow was summoned by the sheriff, and afterwards neglected to send its deputies to the parliament,

ment, as required ; or if the burgesſes left the great council, and returned home without the royal permiſſion ; or, if the men of the town did not pay the tallage aſſeſſed, and reſuſed to conform to the conditions, which had been agreed upon in their name by their members—it was not the buſineſs of the court-baron, or of the houſe of commons, either ſeparately or jointly, to take cogniſance of theſe faults, and to puniſh the culpable ; but the ſovereign alone, with the advice of his privy council, uſually inflicted upon them whatever penalty he pleaſed for their diſobedience to his commands. They were his own men, who had offended, perſons immediately ſubordinate to his own jurifdiction, and therefore were not liable to be called to an account by any other court but his own.

101. One thing more, I preſume, may very properly be remarked before we quit this ſubject, namely, that as the circumſtances of the cities, burrows, and towns in royal demefne were extremely different from each other, it muſt neceſſarily follow, that the burthen of being obliged to ſend deputies,

puties, or commissioners to parliament, would be very unequally felt by them. For whilst some of them (the cities and naval towns more especially) on account of their wealth, the largeness of their commerce, and the number of substantial inhabitants with whom they abounded, would be always in a condition to elect fit and able men to appear for them in the great national councils: others, on the contrary, such of them especially as depended chiefly upon agriculture, and an inland trade for their subsistence, by reason of their poverty, a failing traffick, and the want of townsmen duly qualified, would be utterly unable either to find two proper persons with sufficient sureties out of their own body to send to parliament in their stead, or to maintain them there after the choice was made. In these cases, therefore, the sheriffs of the several counties, tho' they were enjoined by the tenor of the king's writ to summon every city, burrow, and town in antient royal demesne within their respective jurisdictions without exception; yet no places being  
ing

ing named, or particularly specified to them, these officers would, and actually did think themselves at liberty to make use of their own judgment and discretion in the affair, and to dispense with sending their precepts to such small, indigent and impoverished towns, as are above described; tho' they were certainly comprehended within the king's general mandate equally with the most opulent and flourishing—taking it for granted, as they reasonably might, that as there could be no objection to the not summoning these incapable demesnes, if I may so call them, on the part of the king, if so be they refused not to pay the small pittance of the future tallage, which fell to their share; so, on the other side, that the men of these towns would be very willing to contribute their proportion towards the taxations, which should be hereafter imposed upon the royal demesnes by such of their brethren, as were better able to attend the parliament than themselves, without being oppressed with the additional burthen of bearing the expences of representatives, who could not possibly

possibly be of any credit or service to them\*. Knowing already, especially after the famous assessment of the 8 *Edward* III. what a fifth, tenth, or fifteenth etc. of their movables amounted to—no sooner was a like aid granted again, either in whole or in part, but they were prepared to pay their share towards it, without murmuring, or complaining either to the king's court, or to parliament, of the sheriff's negligence,  
or

\* *Brady's Treatise of Burrows*, p. 52. It was left to the sheriff of each county to name and direct, which were burrows, and which were not, by those indefinite and general words in the writ—*de qualibet civitate duos cives, et de quolibet burgo duos burgenfes etc. eligi facias*—id. p. 54. And so it was in Yorkshire etc. and in most, if not all the counties in England, where there were at the time of the returns any small, poor, inconsiderable burrows; and where the sheriffs were more or less kind to them, *they returned or omitted them at pleasure*, and for all whatever I could find, notwithstanding all my endeavour, without the direction of the king or his council—In the 5th of Rich. II. there was a law made, that if any sheriff of the realm should be from thenceforth negligent in making his returns of writs of the parliament; or that he should leave out of the said returns any cities or burrows, which are bound, and of old time were wont to come to the parliament, he should be punished, in the manner, as was accustomed to be done in the said case, in the said time past. But notwithstanding this law, the practice of the sheriffs remained the same as it was before.” Our author then goes on to produce authentic records in proof of his assertion—and p. 59. draws this conclusion—“ By these few returns, and instances of very many more, which might have been produced, if needful, it is abundantly proved, that from the 23 *Ed. I.* when the first writs were sent forth for the choice of citizens and burgesses, and also during the reigns of *Edw. II.* and *III. Rich. II. Henry IV.*

or partiality in not sending his precept to them, in like manner as he had done to the other towns in demesne. Nor need it, I believe, be particularly remarked, that if the greatest part of our present parliamentary burrows were obliged to choose their representatives out of their own little communities ; to find sufficient sureties for their appearance at the time and place fixed in the writ ; and to maintain them, likewise,

IV. V. and VI. and *Edw. IV.* it was left to the discretion and judgment of the sheriffs, which burrows were *fit* and *able* to send burgeses, and which not ; and that, if any antient able burrows became poor and indigent, and *unable to pay the expences of their burgeses*, or *had none fit to choose*, it was a just ground for the sheriff to excuse them from the trouble and charge of electing and sending burgeses, notwithstanding several statutes made to the contrary etc. I shall finish with this remark ; that the burrows, during the time of all these kings reigns, never complained of the sheriffs for not returning them burrows, or not sending precepts to them, [except in the case of St. Albans, which has been considered] or taking away their birth-rights — nor did the king, lords, or commons in parliament ever [punish] blame, complain of, or question the sheriffs for sending, or not sending precepts to this or that burrow ; to all, or any of them, and making returns accordingly. Nor was it accounted an advantage, honour, or privilege, to send burgeses to parliament ; but rather on the contrary, it was reputed a burthen and a grievance for poor and small burrows to send them, as in the case of *Torrington* in Devonshire, that petitioned the king in parliament, to be discharged of sending burgeses to parliament, suggesting it was a great trouble and charge, and to their manifest damage and depression ; and their petition was granted, and the town or burrow exonerated, and excused for ever after, tho' it had sent burgeses 32 times before.

likewise, during their whole attendance in the national councils, they would be very glad to excuse, and even ready to make interest with the sheriff of the county, as for an especial favour, that he would omit summoning them to send their deputies to parliament. Hence, likewise, are we enabled to give a satisfactory reason for the great difference, which we find in the antient records, concerning the names of our earliest parliamentary burrows, both from one another, and from those, which enjoy the important privilege at present. For those towns in demesne, which had persons properly qualified to represent them at one time, might be deprived of such choice at another ; and such places, as had formerly been rich, and able to maintain their deputies, thro' the various accidents

<sup>b</sup> I have never been able to find evidence, sufficient to induce me to conclude, that a *Burrow*, whether it had this title by prescription or incorporation by charter from the king, was any more entitled to a seat in the national councils, than any other place in demesne, which was not incorporated. The former indeed, as being more remarkable, better known, and generally speaking more wealthy, could not, for these reasons, be so easily omitted by the sheriff, when he was issuing his precepts to the burrows to serve in parliament, as those places in demesne, whose situation, poverty, or obscurity had disabled them from obtaining such written charters of privileges, whose employment was chiefly agriculture, and their trade only by retale with their poor neighbours

dents which attend commerce, might be become indigent and impoverished, as a contrary fate might attend other burrows. —So again, while the privilege of specifying, or fixing upon the parliamentary burrows, was left, almost wholly, to the discretion, and in the power of the sheriffs of the counties, some towns would be able to get themselves excused from this burthen-some service, thro' the kindness and partiality of these officers; as others perhaps would have the weight thrown upon them out of private pique or resentment — places likewise, which had antiently belonged to the demesne of the crown, might have been granted away to some private proprietor; as others, in process of time, became part of the royal estate, either by exchange, purchase, escheat, or other accidents<sup>b</sup>.

102.

hours—but that great numbers of places in demesne, which were neither burrows by incorporation nor prescription, actually sent members to the parliament, as well as these others, evidently appears from the list of the towns, which are at present entitled to that most important privilege—But for the more complete satisfaction of the curious reader upon this point, I have subjoined (see appendix N<sup>o</sup>. 2.) a list of all the cities, burrows, and towns in England which, at this day, return members to our parliaments—to which I have added the date of their first returns, as far as I have been able to investigate them, by the help of *Dr. Brown Willis Notitia Parliamentaria*.

102. Having now fully considered (with all due regard to the opinion of those who differ from me) the origin of the house of commons, the reader, who is not already well versed in these enquiries, will, I doubt not, excuse the delay, if I take this opportunity to inform him; that the same time and occasion, which constituted the commonalty a new order in the realm, added likewise the inferior clergy to the Anglo Norman parliaments, as an estate distinct both from the barons and the people. For the first summons, which is found directed to the archbishops and bishops, wherein their lordships are enjoined to cause the chapters of their cathedral churches, and the body of the clergy of their several diocesses, to come to parliament with them, *by their procurators or representatives*, is dated the 23 Edward I.; and the same reason given in the writ, to induce the bishops and their clergy effectually to comply with the sovereign's request, which was assigned in that sent to the sheriffs of the counties, when they were first commanded to summon the citizens

\* See: Brady's treatise of English burrows, p. 35. where the

zens and burgesſes to appear in the ſame aſſembly. The profeſſed intention of calling theſe two orders together, in a manner ſo new and unaccuſtomed, was, that they might treat, ordain, and fix upon ſome method, together with the king, and the reſt of the prelates and great men, to prevent or obviate the dangers threatened to the nation from an invaſion, which was ſoon expected from France. “ But certain it is, as Dr. *Brady* has juſtly obſerved, “ the “ treating, ordaining, and appointing remedies to prevent the imminent dangers to the kingdom, was only to raiſe “ money to proſecute the war—and towards that, the clergy gave a *tenth*; “ the earls, barons, and knights gave an “ *eleventh*; and the demefne cities, burrows, and king’s tenants in demefne “ gave a *ſeventh* part of all their moveable goods: there were no laws made, “ or other matters diſpatched in this parliament”—but this is a matter not to be ſlightly paſſed over. Before the 23 *Edward* I. ſuch both of the dignified and parochial clergy, as had manors, or knights

X 3

fees

writ to the archbiſhop of Canterbury is inſerted at large.

foes appendant to their preferments, which they held immediately from the crown, (as was the case of many of them) had been usually summoned to appear in person, together with the other tenants by knights service, at the general court-baron of the kingdom; and were, of consequence, liable to all such payments to the crown, as were due to it either by antient custom, or by the immediate grant of the free tenants in capite. But with regard to the *inferior clergy*, in general, who had only tythes, oblations, surplice-fees, and, perhaps, small parcels of glebe to live upon, their property being chiefly personal, there could be no pretence for assessing their incomes with the landed estates of the king's military tenants: so that they contributed nothing to the aid of the sovereign, and to the relief of the public necessities, but what they could be induced to charge themselves with, as a free gift, at the persuasions of the archbishops, bishops, etc. either separately at their own habitations, or in a body, when assembled together in their diocesan synods, or provincial convocations—for tho' the several tenants

tenants in demesne, as being the *men* of their respective patrons, and owing feudal obedience to their precepts, were obliged to attend their courts, to perform the accustomed services and prestations, to pay the stipulated rent, and to discharge all other assessments upon their property, which their lords, with the advice of their council, thought proper to demand of them : yet the inferior clergy were freeholders in the strictest, even in the modern sense of the word ; they were a body of men entirely independant ; nor had any person whatever a right to call upon them for their service, attendance, and pecuniary assistance without their own consent. Their incomes, tho' not hereditary like the lay-fees, were possessed by them free from all sorts of charges and incumbrances whatever, except such as they voluntarily submitted to take upon themselves.—The king, for instance, neither had, nor, in fact, ever did exercise any power over them, even to call them together by his own authority, much less to talliate them, as he did his proper demesnes, at his will and pleasure. All that he could lawfully demand of them

was their general allegiance, and their prayers. They stood in a quite different relation to him both from his military tenants, and from the men either of his trading or rural towns — Nor had the court-baron, or great council of the nation, any right or claim to deprive them of a part of their property by laws and ordinances enacted by them, not only, as custom had, in a manner, exempted them from all lay-exactions whatever; but, especially, as they constituted a different rank or order in the state, and consequently were not subservient to ordinances agreed upon by the barons, unless such ordinances had been consented to by the prelates, (who, as the king's tenants in capite, had an original seat in parliament) and were afterwards accepted of by themselves in their own ecclesiastical assemblies. Nor must we imagine, in the last place, that either the archbishops or bishops had any right to levy a tax upon the effects of the diocesan clergy, without obtaining their previous consent and approbation. They had, indeed, a proper jurisdiction over them in spirituals; and the most

most prompt and exact obedience was always expected to their canonical injunctions; but with regard to temporalities of the parochial clergy, these having been conferred upon them, without reserve, by the bounty of their several benefactors, and confirmed to them both by the civil and ecclesiastical laws of their country, they could not legally be deprived of them, either in whole, or in part, but by their own act and deed. The Pope of Rome, it is true, (such was the superstition and stupid ignorance of the times) looked upon the universal clergy, whether of high or low degree, as his men, his subjects, and his property; and he treated them accordingly, extorting from that slavish dependence, in which they had bound themselves to him, whatever sums of money his own ambitious views, or the avarice of his courtiers prompted him to demand of them—so that from the single kingdom of England, upon an enquiry made in Henry III's time, he was found to have exported more than 60,000 marcs for many years together. But if neither the king; nor the temporal barons; nor the lords  
spiritual

spiritual ever claimed, or exercised, a right of levying taxes upon the property of the inferior clergy, without first obtaining their express consent to the aid required of them—what was to be done, both in the present and any future emergency of the like nature, in order to induce this powerful body to contribute their share to the speedy, and effectual, relief of the king's pressing wants? to wait till diocesan synods could be convened, and the whole clergy, throughout the nation, could be persuaded to join in a large and seasonable free gift to the sovereign, according to the methods formerly practised, might occasion the loss of an opportunity, and, by that means, be extremely prejudicial to the public interest. It was, therefore, thought most advisable to have recourse to the expedient abovementioned, namely, to enjoin and command the archbishops and bishops, in virtue of the fidelity and obedience, which they owed to the king, to summon the clergy of their several diocesses to attend them in parliament, by their proxies sufficiently empowered to act for them—then and there, together with the king, and barons, and

and commons, to consider and deliberate in what manner they might most effectually prevent the mischiefs, which were threatened to the nation by France—For by this means, agreeably to the tenor of the writ, what concerned all would be ratified and approved by all, (as the best political maxims required it should be) and common dangers would be obviated by remedies provided and approved by the general consent.

103. Such then appears to me to have been the origin of that national collection of the clergy, which was summoned to represent the whole body in parliament, and which, accordingly, formed a third order in the state, distinct both from the barons, and the commons. It had, indeed, been usual, from the first establishment of christianity in this island, for the bishops and their clergy frequently to meet together in diocesan synods, provincial convocations, and national councils, there to form, with the common advice and consent, ecclesiastical laws and canons; and, with the approbation of the sovereign, to regulate all other matters relative to the doctrine, discipline, and government of the church of England. But,

(to

(to use the words of that most reverend prelate, who has laboured with the greatest success in elucidating this obscure subject) “ from the conquest to the time of  
 “ King *Edward* I. it does not appear,  
 “ that any of the clergy were wont to be  
 “ called to parliament, besides the bi-  
 “ shops and prelates, and such others, as  
 “ by virtue of their temporal tenures  
 “ were obliged (if required) to come to  
 “ it. It was in the 23d year of this  
 “ prince, that the clause *praemunientes* was  
 “ first put in the bishops writs; and by  
 “ being so, did first entitle, or rather ob-  
 “ lige the lower clergy, partly in per-  
 “ son, and partly by their proxies, to  
 “ come to parliament, there to act as the  
 “ estate of the clergy. And in this ca-  
 “ pacity they were from thenceforth com-  
 “ monly cited to the great council, and  
 “ considered as one of the first and chief-  
 “ est estates of the realm. How the lower  
 “ clergy acted in parliament, and in what  
 “ affairs their consent was thought to be  
 “ necessary, is not easy to determine. In  
 “ a matter so obscure, if I may be allow-  
 ed

“ *Archbishop Wake's state of the church and clergy of England,*

“ ed to offer my present thoughts, I con-  
 “ ceive, that the bishops and clergy, like  
 “ the lords and commons, deliberated of  
 “ such matters, wherein they were proper-  
 “ ly concerned, in a separate assembly by  
 “ themselves ; which having done, they  
 “ left it to their archbishops and bishops  
 “ to deliver their sense, and to give or re-  
 “ fuse their assent for them in parliament.  
 “ For, to the best of my observations, I  
 “ cannot find, that they were wont to ap-  
 “ pear personally there, like lay-com-  
 “ mons, to transact their own affairs; and,  
 “ in many cases, it is evident, that they  
 “ referred it to their bishops to petition  
 “ and act for them — “ after King *Ed-*  
 “ *ward* I. had brought the lower clergy, by  
 “ his premunitory clause, to parliament;  
 “ tho’ they did sometimes grant their sub-  
 “ sidies there, yet they soon after fell up-  
 “ on the practice of taxing themselves in  
 “ their *provincial convocations*, which was  
 “ the method, that finally prevailed; and,  
 “ by degrees, brought their *parliamentary*  
 “ *conventions* into disuse.”

104. Tho’ I am very sensible, that ma-  
 ny

ny plausible objections have been urged by Mr. *Petit*, Mr. *Tyrrel*, and other authors, against the truth of the hypothesis, which I have been here endeavouring to illustrate and defend, with regard I mean to the original of the house of commons; yet I cannot persuade myself to think these arguments of such importance, as to produce them to the reader in form, especially as I have already endeavoured to obviate the most material of them in the preceding sheets. To call for the light of demonstration in the midst of all the darkness and ambiguity, with which this question is involved, is to demand, what is impossible to be obtained: and a good degree of historical probability, in a point of such remote antiquity, where we cannot have the decisive evidence of contemporary writers, is the utmost, that can reasonably be expected. Having no other prospect in view when

records of procuratorial letters from the diocesan clergy to their proxies, run up as high as *Edward I.* Tho' how many reigns afterwards, the representatives of the lower clergy acted with the temporal commons in parliament, is not easy to determine. It is, probably, conjectured, that about the time of *Henry VI.* this usage began to be discontinued, and quite dropped by degrees. The clergy themselves are thought to have contributed towards the parting with this privilege. It seems, they looked upon

when I first entered upon this enquiry, than the mere investigation of an interesting truth, I have all along treated my subject with the same indifference and impartiality, as I would have done a mathematical problem, without being at all apprehensive of any conclusions, which may be deduced from it, in favour of their principles, who pretend to believe, who, at least, confidently assert, that *kings de jure* reign by divine right, have a claim both to the passive, as well as active obedience of their subjects, and, consequently, may never be resisted on any occasion whatever. For even our earliest Norman princes (to say nothing of the quiet times immediately preceding the conquest) never acted, as if they imagined, that they were absolute masters of the kingdom, over which they presided, and had a right to do in it what they pleased. They could not lay any tax upon their barons

upon their parliamentary attendance, as a kind of burthen, and therefore were not unwilling to be disengaged."—The inferior clergy have made several attempts to restore themselves to this important privilege of being admitted again to sit in the house of commons, according to antient custom of the nation, and the tenor of the bishop's writ to parliament, namely; 1 *Edward VI.*; towards the latter end of *Queen Elizabeth's* reign; and once again in *King James I.* time. See *Burnet's history of the reformation* etc.

\* See

barons or military tenants without their own consent, unless in the three customary and well known cases; and even upon those occasions, tho' the regal claim was not disputed, yet, if the assessment was more than usual, and not proportioned to the conjuncture, the body of the barons thought themselves at liberty either to moderate, or entirely to refuse the payment —with regard to all other taxations, whether upon their landed or personal estates, their express approbation was previously required, both as to the quantity of the sum to be raised, and to the manner of collecting it. The barons could be neither condemned, fined, nor punished by the authority of the prince alone, without the judgment of their compeers; nor would they admit of the least innovation to be made in the antient and approved laws and customs of the realm, unless such alteration had been agreed upon by the common assent. The statutes and charters, which had been once ratified by the sovereign, could be never afterwards either repealed or suspended without the joint permission

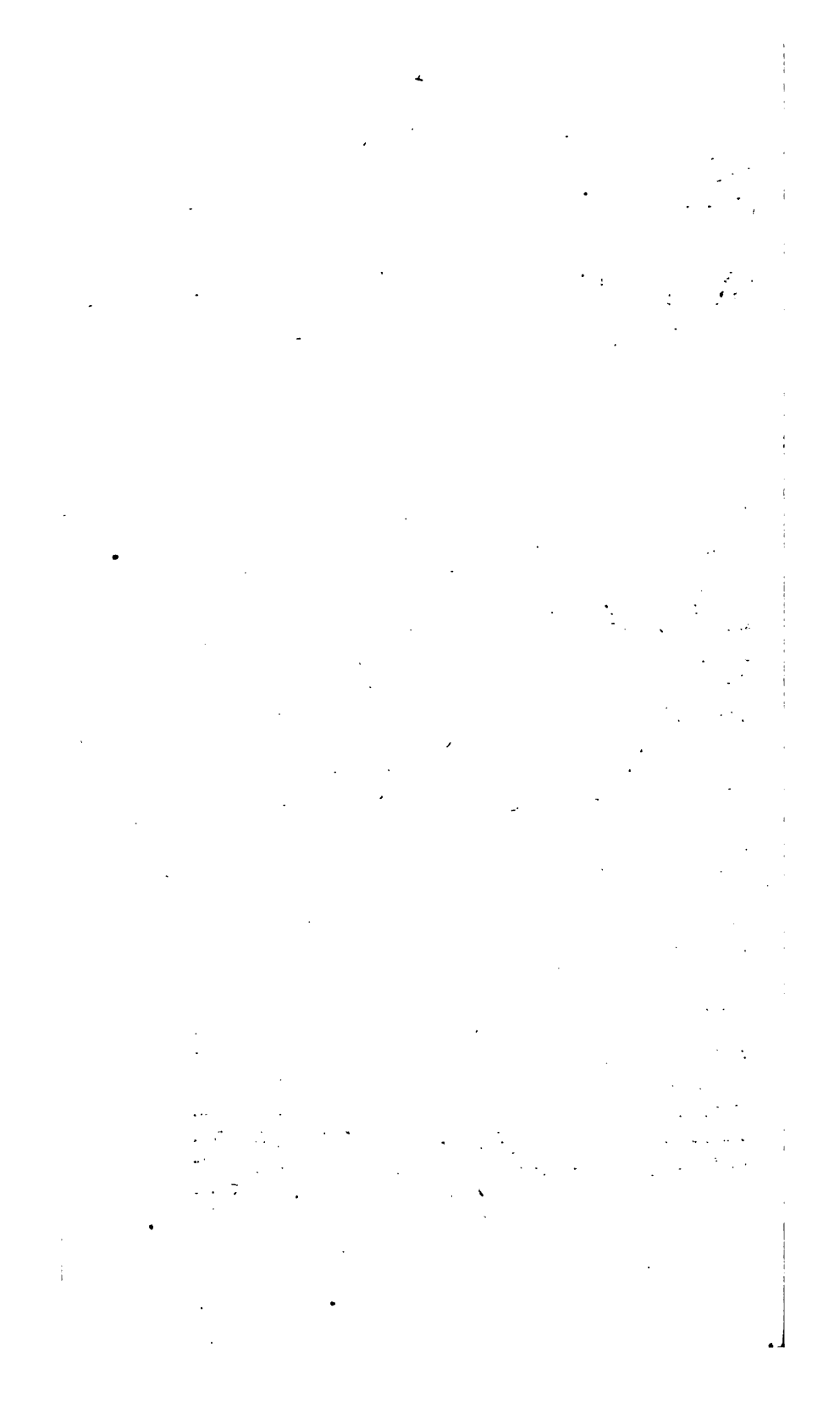
\* See the last book of the *Spirit of laws*.

permission of those great men, in whose favour, and at whose request they had been granted—And give me leave to add one thing farther, which may be proved not only from our own annals, but from the history of every state upon the continent, where the feudal constitutions took place, that tho' the succession of the crown, like the descent of other fees, was, in general, regarded as hereditary; yet that the first princes of the Norman line never looked upon themselves as sovereigns of the realm, till they had been recognised, as such, by their court-baron.—The power which every military tenant of the crown exercised in his estate over his own men, and vassals, exempted, as it were, these vassals from the regal jurisdiction, which could neither compel them to serve in the wars, nor to supply money to the necessities of the exchequer, without their lord's permission. The overbalance of property being, in those days, vested entirely in the hands of the barons and prelates, they had always power and strength sufficient to limit the authority of their princes, and to

fix it within the bounds of custom, law and reason. *The Commons of England*, I confess, appear, as yet, in a very inferior light, when compared with their present weight, authority, and importance in the state—nor could they, indeed, possibly appear otherwise, whilst their property was chiefly personal, and the little land, which they possessed, either held of a superior at a fee-ferm-rent, or possessed by them under some base tenure. Both reason and historical experience must soon satisfy every thinking person, that *the commons* could, by no means, be of any considerable weight in the government, till a way was opened to them to acquire independant estates in land. From that period, indeed, by gaining something from the crown, a great deal from the barons, and more from the church, the scale, which formerly kicked the beam, grew heavier and heavier, till it, at length, wholly preponderated. — but having already fully considered this subject, in an *historical Essay*, which I published some time since *upon the balance of civil power* in this country, I shall not scruple to

to subjoin, by way of appendix, the greatest part of that treatise, flattering myself, that it will not be looked upon as an improper, or uninteresting, sequel to *an enquiry into the foundation of the English constitution.*





# APPENDIX.

## NUMBER I.

— after the last solemn renewal, and confirmation of *Magna Charta*, 25 Edward I. our best and wisest princes, well knowing how vain it was to struggle against the letter of written laws, and to attempt to subdue the power of their nobility, with which they saw themselves environed, remained satisfied with the share of authority, which the present constitution gave them, turning their whole thoughts to military achievements and foreign conquests, whither their own inclinations and the warlike genius of their people more especially invited their arms. We sometimes, indeed, read of weak princes, of an Edward, or Richard the second, who pursued a contrary course, endeavouring to reign independently of their barons, and to shake off the yoke of those laws, which their predecessors had, with so much solemnity, assented to; but they were quickly found light in the balance and wanting: and tho' the first fury of the temper generally spent itself upon the *Gavestones* and *Spencers*, upon the ill-judging and hated ministers, who had advised the rash attempt; yet did not the person of the king himself always escape the resentment of his deceived and irritated nobility.

The terrible factions, and consequent civil wars, which arose, concerning the succession of the houses of *York* and *Lancaster* to the crown, tho' very destructive of the foreign glory, and extremely fatal to the internal peace and welfare of the kingdom; yet do not properly fall under our present disquisition, as they were not the immediate

diate result of an inequality in the balance of civil power. The dispute, in this case, was not, as it had formerly been, between the king and his nobility; but, in reality, between the greater barons themselves, the *Beauforts*, the *Nevilles*, the *Piercies*, &c. which of them should have the largest share in the government of the kingdom by setting up a prince of their own, who, owing his establishment to their popularity, interest, and the force of their arm, should still continue to be managed and directed by their councils. —The person, upon whose head the crown chanced to be placed, had little else to do but to temporise, to divide his potent subjects amongst themselves, and by siding sometimes with one faction, and sometimes with another, to weather the storm, as well as he could, tho' he was generally sure of being sufferer in the event.

The union of the two contending houses in the persons of *Henry the seventh* and his queen, put the first effectual stop to those fierce and unnatural wars, which had so long destroyed the peace, and exhausted the strength of the nation. —This prince, bred up in the severe school of affliction, grave, thoughtful, thrifty, provident, but especially famous for the depth of his political skill, saw himself quietly seated on a throne, to which his birth gave him but small pretensions, and acknowledged as their lawful sovereign by the whole kingdom, with an universal calm around him. The great difficulty, therefore, was how to preserve the present tranquillity from being disturbed; his title, he could not but be conscious, was very questionable and precarious; there were many pretenders to the throne alive, and he had great reason to apprehend, that as he owed his advancement altogether to the favour of the nobility, so he must still depend upon their pleasure or caprice for the continuance of his prosperity. For his own experience, as well as the history of his predecessors, had sufficiently convinced him, that the crown, which he wore, was entirely at their disposal.

Should he, however, endeavour to lessen the preponderating weight of his barons, and to emancipate himself  
and

and his posterity from the state of wardship, in which they had so long held the crown, by open force, it was easy to foresee, that there was but small probability of succeeding in the undertaking, whilst they were possessed of such vast quantities of land, whilst their influence was so extensive, and the number of retainers, followers and dependants, which they usually maintained, so great.——Policy, therefore, was the only resource which he had left, to effectuate what he could not but earnestly wish for. The same share of property, when thrown into a multitude of hands, might not perhaps be found quite so formidable to the crown, as when preserved in the possession of few. The present situation of affairs was extremely favourable to these views, and the king wise enough to know how to make the best use of the conjuncture.

The destructive civil wars, in which the nobility had been so long engaged one against another, had wholly extinguished some of the richest and most powerful families in the nation, and greatly reduced others; the personal estates of all were excessively exhausted, and their lands encumbered with heavy debts. Thus distressed in their private circumstances, there was a general uneasiness amongst them; all wished for some relief, tho' by what means to attain it they knew not. An obvious method, indeed, offered itself to their assistance, which was to sell some part of their large estates, in order to redeem and clear the rest—but this remedy could be of no service to them, it having been expressly ordained by *magna charta* itself, that no military tenant should alienate his lands, without the leave of his superior, and the reason was plain, lest the antient number of knights-fees should be thereby reduced, and of consequence the militia of the kingdom be rendered precarious and uncertain.—However, as it was likely to be of much ease and convenience to his nobility, and would furnish them with money for the war, which he was just going to engage in against *France*, the king was very ready to suggest, encourage, and give his consent to a statute, *which*, as lord Bacon

expresses it, *might set the gate open and wide, for men to sell or mortgage their lands, without fines for alienation.*

But this alone was not sufficient to answer the purpose of the sovereign—it had hitherto been customary for every baron, in proportion to the largeness of his estate, to be accompanied with a numerous and splendid train of followers, or *retainers* as they were usually called, who made up their patron's court, not only as his friends, counsellors, and assistants, upon all occasions, but generally lived with him as a sort of *guard du corps* about his person—they were a determined band of free attendants, ready to execute all his commands; and particularly to discipline his tenants, and to march, as officers, at the head of them, as often as their master was pleased to demand their service. This independant and kingly manner of life of the superior landholders upon their own baronies, and within their castles, as it gave rise to constant emulation in the nobility, who should have the greatest number of these dependants in their train; so it occasioned frequent quarrels amongst them, and rendered them all much less observant of the public laws, and the commands of their prince, than otherwise they would have been.—With the permission, and consent of the barons themselves, the exorbitant number of *retainers*, this sturdy band of pensioners, which filled their several houses, might be restrained and lessened; but nothing of this nature could be attempted without their previous approbation.

The yeomanry of the kingdom, it was obvious to common observation, was greatly exhausted by the late consuming wars, whilst the lands lay every where uncultivated, merely for want of husbandmen to discharge the business of the plow; it was easy, therefore, to insinuate the great defect of policy in detaining such numbers of useless hands about the persons of the barons, only for the sake of their attendance, when they might, with so much more advantage to the common interest, be employed in tilling and improving the wasted country. The estates

of the nobility were already too much exhausted and encumbered, to continue still to load them with the vain and unnecessary expence of maintaining so large retinues. It would certainly afford the most signal ease to their private fortunes, could they persuade themselves to dismiss a part of that idle and superfluous train, which was wont to live upon them, and to waste and devour their substance.—These and other arguments of a like tendency, induced the nobility to agree to an act of parliament, which proposed to them, to restrain the number of these retainers for the future, and to settle how many each baron, according to his quality, should hereafter have about him in his family.—Had not experience taught us, it had been impossible to have conceived, how much the enacting these two statutes, namely, for restraining the number of retainers, and permitting the free alienation of land, contributed to sap and overturn the very foundation of all the power and authority, which the nobility had so long exercised.

I know not, wise as he is generally reputed to have been, whether *Henry VII.* was politician enough, to discern the remote tendency of these laws: it is true, indeed, they answered the present purpose, which was, to weaken the excessive influence of the greater nobility, and to reduce that potent body a little more upon a level with the crown, than it had been for some ages past. But if either the king, or his counsellors really imagined, that the power, which was taken from the barons, must necessarily fall into the royal scale, and encrease the weight of the prince, the event shews, that they were extremely mistaken in their sentiments. For out of the ashes of the barons, grew up, by degrees, another power of superior force in the common-wealth, equally troublesome to the prince, and far more dangerous to the stability of the throne: so that, even as early as *Queen Elizabeth's* days, *Sir Henry Wotton* was used to say, that “the reign of *Henry VII.* had ruined the *English* monarchy.”

Hitherto the house of commons could scarcely be regarded as a free and independant order in the state. For  
neither

neither could the burrows, on one hand, nor the freeholders of the counties, on the other, choose any other representatives, than such as were pointed out, and recommended, to them by the king, or the nobility, in whose vassalage they were; nor would the persons, who were elected, presume to vote otherwise, than as they were directed, seeing the greater part of them was wholly dependant upon some superior for their very subsistence. Certain it is, that the power of the commons could not be very great in those early times, as their comparative property was so inconsiderable, and almost wholly personal. "The land in the nobility and clergy, says *Har-rington*, "till the time of *Henry VII.* cannot be estimated "to have overbalanced the people's possessions, less "than four to one," even tho' we should include, in the account, the property of all the lesser military tenants in capite, who were represented by the knights of the shire.

But things now began to appear with another face, and to take a different turn—as the *statute of Retainers* had increased the number of yeomen in the several parts of the kingdom, and, in the literal sense of the words, had beaten the soldiers' swords into plow-shares; so the law, whereby the landholders were permitted to sell or mortgage their estates, without being subject to fines of alienation, or asking permission of the sovereign, had opened a new scene of hope, and laid the deep foundations of an encreasing trade and commerce. The continual demands of grandeur and luxury would always furnish the thrifty husbandman, the skilful artificer, and the industrious manufacturer, with opportunities of vesting the balance of their commerce in durable estates of land, and of safely transmitting the profits of their labour to their posterity. The power, likewise, and magnificence of the states of *Genoa* and *Venice*; the flourishing condition of the *Hans-towns* more especially, the splendour of their merchants, and the influence, which they exercised in every kingdom of Europe, sufficiently taught the provident and thoughtful, what vast things might in time be effected if navigation and foreign commerce were properly supported

ported and pursued. — Animated, therefore, by those motives, pushed on by the discovery of a new world full of gold and silver, and encouraged by the unusual domestic peace, with which they felt themselves blessed, from this period the people of *England* began to make the proper use of their naval situation, and to exert that universal genius, which fits them for the accomplishment of every thing, to which they will diligently apply themselves.

In this interval, whilst the scale of the nobility was every day losing somewhat of its antient weight, and that of the people gaining in the same proportion, *Henry the eighth* began his reign. This prince was, perhaps, the most arbitrary monarch, that ever sat upon the *English* throne, not excepting the *first William*; and, what deserves to be remarked, with the least trouble and hazard to himself. If we enquire into the causes to which the anticonstitutional greatness of this king is to be imputed, we shall find, that his perpetual sunshine of good fortune was by no means owing to his superior abilities of mind, or to an extraordinary skill in the art of government. His understanding, indeed, was not bad, could he have been persuaded to have made the best use of it. Learning, likewise, he had acquired, but it was that of the pedant, rather than of the prince; and in the science of political knowledge he was far exceeded by his father — nor can it be denied, but that he was proud, vain-glorious, ostentatious, and a lover of pleasure rather than of business. Much less was the extravagant power, which he grossly abused, the purchase of those immense sums, which his predecessor had so thriftily, not to say oppressively, amassed together. For these were all quickly squandered away in useless pomp, and the magnificent parade of luxury. — We must have recourse therefore to the critical conjuncture, when this prince mounted the throne, in order to account for his uncommon greatness. — The *antient nobility* had already begun to lose a considerable part of that authority, with which they had been wont to influence the councils, and to balance the weight,

weight of the crown; and tho' they could not but be most feelingly sensible of the immense stretches of the prerogative, with which their king was continually exercising their patience; yet not being able to controul his arbitrary measures, without the hazard of engaging themselves in a civil war, for which they were but very indifferently prepared, they thought it the most prudent way to connive at his encroachments, and to sit down easy and contented under the galling yoke.—— The *Commons*, on the other hand, were as yet but beginning, as it were, to form themselves; they hardly knew, whether they might venture to meddle with affairs of state; to use a plain phrase, they had scarcely found their legs, or were sensible of their own force and importance in the public administration.—— so that between both, the monarch remained at liberty to act as he thought fit, with very little left to oppose, or controul, the capricious resolution of that will, which the violence of his passions prompted him to make the only law of his subjects.

If it be here asked, whether it was in the power of *Henry VIII.* to have transmitted the same degree of authority to his successors, which he exercised himself; and to have established arbitrary dominion in the crown, as well as in his own person?—— I own, I see no reason why he might not have done it, considering the circumstances of the times, in which he reigned, the religious animosities which divided his subjects; and the other favourable opportunities, which fell in his way. For if, after having abolished the papal supremacy, he had either seized all the church and abbey lands into his own hands, and annexed them for ever to the crown, (as *Charles* the eleventh of *Sweden* did upon a like occasion) or, had distributed them amongst the leaders of those armies, which he carried with him into *France*, to hold of him and his successors, for their lives only, as temporary lay benefices, under the condition of military service, (either of which he might have brought about, in the fluctuating and unsettled state of the kingdom) the over-  
balance

balance of property would, by these means, have been so entirely thrown into the disposal of the crown, as must for ever have secured to it the absolute command of the whole national power.—But neither deep thinking, nor consistent acting, constituted any part of this king's character. Pleasure therefore, and some romantic views of his own, or of his favourite minister, always dissipated his wealth in vanity, and lost him those favourable opportunities of establishing the future authority of the crown, which the season seemed so fairly to offer to him.—Let us, however, be so just to this prince's memory, as to confess, that he never had any settled ill designs upon the liberty of his subjects: constant supplies of money to support his magnificent extravagance, together with their readiest obedience to his will, was all that his impatience demanded of them, without attending to distant consequences; and as for his successors, them he left to provide, as well as they could, for themselves.

The church-lands, therefore, with all their rich appendages of plate, furniture, and cattle, were soon wasted in vanity, and consumed in excess and folly; and, instead of adding, in the least, to the weight of the crown, or contributing to the power of the Barons, within the compass of a few years, fell (the greatest part of them) into the possession of those industrious men, whose skill in trade, and commerce with foreign nations, had furnished them with ready money enough to seize an opportunity so propitious to their interest. For the nobility, hurried away with the pleasing luxury of a splendid court, and emulating the pomp and extravagance of their vain master, whose person they were obliged frequently to attend, could make but little use of the juncture to enrich and aggrandize themselves. Here then was the harvest of the commons, and a very plentiful one they experienced it to be. For as these lands, for reasons of state, were sold at very low prices, the number of purchasers was hereby increased, and they fell into the greater multitude of hands.

*Edward*

*Edward the sixth's* minority would have afforded the *Barons* a very good opportunity of recovering some part of their former authority, had they known how to have made a proper use of the season. But not agreeing amongst themselves, who should be uppermost, and govern the infant prince and his kingdom, both *Seymour* and *Dudley*, the two great and opposite heads of the nobility, were each of them obliged, in his turn, to make his court to the commons, and to be continually adding to their weight, and importance, by granting fresh favours to them.—The sale of church-lands still continued as in the last reign, and however the wealth of the religious houses might originally be intended to be bestowed, the largest share of their riches came amongst the middling, and lower, sort of people, raising, by this means, to the rank of gentlemen, the yeomanry and tradesmen of the kingdom.

*Wyat's* attempt to prevent *Queen Mary* from concluding a marriage with *Philip the second* of *Spain*, appears to have been the earliest exertion of power in the people, or commons of *England*, as such. For with respect to the many tumultuary insurrections, which had happened in the time of *Henry the eighth*, and *Edward the sixth*, as they consisted chiefly of the lowest dregs of the people; and had neither a head to conduct, nor any fixed principles of union to cement them, after the violence of the first effort was past, the danger to the state was immediately blown over—but *Sir Thomas Wyat's* party was made up chiefly of men of some property and estate; and his attempt may be considered entirely in a civil view, having been intended to preserve the freedom and independence of this nation, as well as of the rest of *Europe*, from the oppressions and tyranny of *Spain*, of which the *West-Indies*, the *Low-Countries*, the kingdoms of *Naples* and *Sicily*, and the dutchy of *Milan*, afforded instances too recent, not to put all thinking men upon their guard, to check the further progress of a monarchy, whose influence threatened the common peace of *Europe*.—But the strength of the *Commons* was not yet arrived at its vigour

gour and maturity; nor had the people found out the true place of shewing the extent of their power, namely, by their united representatives in parliament. The weight of the crown, therefore, in the then-tumultuary, and fluctuating state of the public affairs, soon prevailed; and the bold and well-designed, tho' crude and ill-concerted, attempt of the *Kentish* yeomanry, was blasted in the bud, and came to nothing—During this reign, thirty nine members of the house of commons were prosecuted by indictment in the king's-bench, for departing from parliament without *special leave* first obtained from the King and Queen; so that, as Lord *Coke* has somewhere observed, “the poor commons, members of parliament, “*in diebus illis*, had no great joy to continue in parliament.”

*Queen Elizabeth* was scarcely less absolute in the execution of her high office, than her father had been before her; tho' she was obliged to use greater caution, and to be much more wary and circumspect in the conduct, which she pursued. What the one commanded to be done, in the most haughty and insolent manner, the other brought about by the more gentle arts of persuasion, insinuation, and policy. The father had no regard to any thing, but to his own inclinations; was proud, wilful, obstinate, and would be obeyed: the daughter, tho' equally fixed and immoveable, in what she had once resolved upon, had always the good of the people in her mouth, was supple, soft, obliging in her general behaviour, and, therefore, was obeyed. *King Henry* exerted his authority as a master, as one who had the power, and could command submission to his will; nor would *Queen Elizabeth* ever permit her prerogative to be limited, or even questioned, tho' she prudently chose to screen, and cover, it under the compliments and concessions of her loving subjects. Her temper would have appeared as haughty and tyrannical as her father's, would the conjuncture have suffered her to have given it full scope.—It was not so much the aversion of this artful princess to the principles of Popery, as the circumstances of her birth

birth and past life, which placed her at the head of the protestants, and caused her to be chiefly directed by their councils and advice, during the course of her long reign.

Both the queen and her ministers were clear-sighted enough to perceive which way the stream of power was beginning to run. The encreasing wealth of the *Commons* had given them a flow of spirits, which their fore-fathers knew nothing of. They now ventured to approach the throne of their own motion; they gave advice to the crown, whenever they thought it was wanted; they petitioned the queen to marry; they debated upon what was most expedient to be done, both in civil and religious matters; and acted, in all respects, as a distinct branch of the legislature, and as a body of men, who had an interest of their own to pursue independent of the other orders of the state. The queen, sometimes, went so far as to threaten, and sometimes she attempted to bring them over to her measures by the gentler methods of persuasion; one while she flattered, and soon again she was ready to chastise the most bold and forward of them, for meddling with things, which did not belong to their province. She governed them, as she pleased, it is true, but it was after such a manner, as none but a wise prince, aided by an honest, resolute, and able ministry, must ever presume to follow.

As the people still went on advancing in wealth, by means of an encreasing commerce, and a long and successful war with *Spain*, both in *Europe* and *America*, they became every day more and more considerable, both in their own opinion, and in the balance of government—and this high conceit, which they entertained of their own worth and importance, added to the detestation, which they had conceived of every thing, which looked like popery, easily paved the way for the admission of those doctrines, which peculiarly distinguished *Calvin's* reformation from that of *Luther*; and which, whatever their author might really think, or pretend to the contrary, tended, in the event at least, to introduce an equality in the state, as well as in the church.

These doctrines, however, which had been originally imported from *Geneva*, were as vigorously opposed, on the one hand, as they were industriously propagated, on the other: so that, in this reign, the foundation was laid of all our later disputes in religion, as protestants, and the two parties of *Whig* and *Tory* virtually formed. I hope I shall not be thought to take too great a liberty with history, if, by anticipation, I venture to give these well-known and general names to the *Puritans*, and *Church-of-England-men*; tho' I readily own, they are very far from exactly corresponding with the ideas, which we now comprehend under these terms. But I intend, as I proceed, to point out the several additions and alterations, which time and passion made in them, till they arrived at their present maturity.

These parties, originally, were entirely of a religious nature—the *Tories* consisted of such as defended the hierarchy, and maintained the rites and ceremonies of the church of *England*, as they were, at that time, by law established: the *Whigs*, on the contrary, or *Puritans*, were for a second, and more thorough reformation; their principles leading them to labour at the abolition of every article of ecclesiastical discipline, which was still used in the *Romish* communion, and to level the superior dignities and orders of the church, by introducing an equality amongst its ministers.—But the court, and far the greatest part of the nobility, suspecting, at least, that the transition would be but too easy from pulling down the superior magistrates in the church, to levelling those in the state likewise, the *Tories* had the lead during all *Queen Elizabeth's* reign; and however active, industrious and turbulent the opposite party might be, they were able to gain but little ground, towards overturning the religious establishment, or making any considerable alterations in it.

King *James the first* wanted the uniform and steady conduct of his predecessor. Of a light, trifling, and most unkingly understanding, vain and excessively conceited of his own learned sufficiency, his administration was, accordingly, feeble, despised, unsettled, irregular.

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Dazzled

Dazzled with the splendor of being placed at the head of three mighty kingdoms, giddy with the height to which he was advanced, fond of absolute power, and fully persuaded in himself of his right to the implicit obedience of his subjects in all cases, he was ever talking of his uncontrollable authority, and exerting it upon all occasions; but wanting both the capacity requisite to conduct, and the opportunities necessary to support so extensive a claim, he generally came off with disappointment, and disgrace in all his attempts. By grasping at more than he was able to lay hold of, he taught his subjects to call in question that power, which the constitution really gave to him, and which otherwise would never have been disputed with him. As a good-natured man, he appears to have wished well to his subjects prosperity, and was inclined to do every thing for them, which might promote their happiness; but the misfortune was, that he would serve them only in his own way, and that he looked upon every act of kindness which he did to them, and regarded every compliance which he made to their requests, not as their right, but as a matter of mere grace and favour in him. But being utterly unequal to the part which he was acting, and not able to distinguish the mimick from the monarch; having neither skill enough to make into harbour, nor strength sufficient to bear up against the storm, which was gathering round him, no wonder that he was driven before the wind at pleasure, and his authority lost in the violence of the rising tempest.

During the general weakness, and relaxation, of the nerves of government under this weak and incapable prince, the *Whig-party* was continually gaining ground by the accession of fresh numbers. For all who were discontented at the measures of the court; all who disapproved of that unlimited power, which the king was every day claiming as his right, and impotently endeavouring to establish; all who were offended at the immoderate grants made by him to his unworthy minions; all who were for restraining the prerogative, and setting up the

the laws of their country as the common standard both of the sovereign's rule, and of their own obedience—all these, I say, fell in, by degrees, with the murmurs of the *Whigs*, and joined with them in their outcries for an alteration of measures; so that by this means, they, at length, became the majority of the nation, and we are from henceforward to regard them, not only as a religious, but likewise as a civil party in the state. Or, perhaps, more intelligibly, the *Whigs* of King *James I.* as well as those of later times, may be divided into two parts, one of which wanted, and was continually calling for, a change in the discipline of the church, without meditating any innovation in the civil constitution; whilst the other, contented with the hierarchy, and the liturgy, was for fixing more certain and explicit bounds to the authority of the supreme magistrate, which they felt so grossly abused. Both, however, uniting in their common opposition against the abuses of power, which were too general in those days, both in church and state, whatever might be the distinct intentions of their hearts, they may properly enough be considered, in this Essay, as one party.

So considerable an addition of strength to the side of their enemies, as it could not but be soon perceived by the *Tories*, so it induced them to adhere still more closely to the king, to connect their views and interests with those of the sovereign, and to become more warm and strenuous advocates in defence of the prerogative, having no other refuge left, nor prospect of shelter, but under the shadow of the throne——As the *Church-Whigs*, therefore, were always urging passages of scripture in support of that new form of ecclesiastical polity, which they were so zealous to introduce in the realm; the *Tories* likewise had recourse, in their turn, and that with the most happy success, to the same quiver for weapons in defence of the established church—and they would have done well had they known where to have stopped; but not contented with their victory in this point, which was all that really concerned them, and being desirous, out of gratitude to their royal protector

and benefactor, to shut the mouths of those *State-whigs* likewise, who were ever impugning his authority, and exclaiming against the conduct of the administration, they pushed their arguments still farther, and from the authority of holy writ attempted to prove the divine right of kings to their thrones, and consequently to the unlimited obedience, both active and passive, of all their subjects.—This doctrine was so perfectly conformable both to the wishes and practice of the court, that tho' it was loudly argued against by the opposite party, as quite novel, and unheard of before; tho' it was demonstrated to be contrary to the voice of nature, disagreeable to the dictates of right reason, repugnant to the antient constitution, and entirely unsupported by the writings of the evangelists and apostles—yet being propagated with uncommon industry, it was generally received, without attending to consequences, by all the friends of the administration, the greater part of the clergy and nobility—some few of them, possibly, from a sincere persuasion of the truth and utility of such principles; but more, doubtless, from a view to political or private interests, either to increase the ballast of the vessel, which began to be in danger thro' the levity of the pilot, or else to strengthen and flatter those hands, from whence they expected protection or preferment.

From this period, therefore, *the divine right of kings, the indefeasibleness of the succession to the crown; and the absolute obedience of the subject in all cases*, may be reckoned amongst the characteristic principles of the *Tories*: as the contrary opinions, *that civil government was originally the institution of men, and may have bounds prescribed to it by the people; that the succession in extraordinary cases may be limited; and that in extreme necessity, where the very being of the state depended upon it, even the supreme magistrate himself might be resisted*, were of course adopted by the opposite party.

The ill-judged and lavish liberality of King *James*, together with his weak and imprudent conduct in almost every measure of government, having greatly impoverished

verified the crown, and rendered his administration extremely disagreeable to the greatest part of the nation, his ministers, tho' in continual want of money, were very cautious how they ventured to advise him to call a parliament; well knowing that the uneasiness, which lay fermenting over the whole kingdom, would soon kindle and flame out with greater fury, when agitated by the breath of so many assembling tribunes; when the heads of the discontented were suffered to come together, to lay open each man his respective grievances, and to encourage one another to insist upon their speedy and thorough redress.—Tho' every day's experience pointed out to them, where the great strength of the nation lay; and tho' they hourly felt how heavily the wheels of government moved on, when clogged with the discontent of the *Commons*; yet had they neither goodness enough, by correcting the errors of the administration, to remove the objections of their adversaries, nor wisdom sufficient, to know how to manage the opposition: but like miserable state-quacks, all that they could devise was to trust to their opiates, and to suffer the distemper to take its course, rather than by assembling the true physicians of the commonwealth, to discover their own male-practice, and insufficiency to cure the general disorder.

Hence, therefore, amongst the many other fatal mistakes of his reign, their timorous and too-confiding master was put upon the constant pursuit of pacific measures, whether seasonable or not; till, at length, his mean, base, and impolitic conduct in this respect, rendered him the easy dupe both of his friends and enemies, and made him a bye-word amongst the neighbouring nations—It was not, that the king was really so blind, as not to see the necessity of following other measures, particularly of shaking off the yoke of *Spain*, and of engaging warmly in the war for the recovery of the *Palatinate*, and the defence of the distressed *Protestants* upon the continent—but the great misfortune was, that foreign wars could not be effectually carried on, without large

sums of money to support them—but money, both the king and his ministers well knew, was not to be procured in such quantities as would be wanting, without previously calling a parliament, and gratifying the commons in the immediate redress of the numerous grievances, which they justly complained of: but this, notwithstanding all his affected speeches, and laboured harangues from the throne, was what *James* more dreaded than he did all his other enemies together——for none but our best princes; none, but such as have the essential interest of their country at heart, none, but such as, conscious of the integrity of their intentions, dare to meet their people often, be obliged by them, and submit their actions to their free enquiring, are for engaging themselves in the difficulties and encumbrances of foreign wars.

The *Tories*, however, as they appeared to approve and defend all the other measures of King *James's* government, so they applauded, likewise, and adopted the mean-spirited and pacific maxims of their injudicious master; and notwithstanding all the variety of change, which both they and the kingdom have since undergone, steadily, it seems, retain the same narrow and contracted way of thinking even to this day—whilst the *Whigs*, on the other hand, being chiefly made up of the commercial part of the nation, were more especially scandalized at this part of the king's conduct, embraced with eagerness the contrary principles, and were (by all manner of means) for preserving a balance of power amongst those states upon the continent, from a free traffick with whose subjects they expected those sure returns of wealth, which not only contributed to their own riches and prosperity, but to the grandeur likewise, the strength and the happiness of the whole community.

But neither the murmurs, nor remonstrances of his discontented people could produce the effect, which they hoped for from their complaints. The infatuated king persisted in the weak measures, with which he at first set out,

out, and resolved to defend his darling minister and favourite, whatever trouble and hazard it might draw both upon himself and his kingdom.——Nor must it be forgotten, as another cause of the general uneasiness and discontent, which prevailed in the nation, at this time, that the king, tho' he had been bred up in the strictest principles of protestantism, and appeared fond of the doctrines and discipline of the church of *England*, even to affectation, yet terrified by the plots of the papists, and dreading to be assassinated by them, suffered the laws, which had been enacted against them, to remain unexecuted, and their religion every day to gain ground—In this wretched manner, frightened with his own imaginations, deceived by his ministers, despised by his subjects, governed by the *Spaniards*, and duped by his own vanity, the unhappy monarch still went on from bad to worse, till at length a third or *Republican-party* starts up, and makes its appearance upon the public stage. These men were for striking at the constitution itself, as well as at the administration; they were for plucking up the root, as well as for lopping the superfluous branches, and for taking away the remote, as well as the nearer cause of the national misfortunes: they were for pulling down the throne itself, that it might no more serve for a screen to shelter weak and wicked ministers. When all was reduced to the original level, they might then, perhaps, be considered in their turn, and come in for a share of that government, to which they thought they had as good a natural right, as those who now so weakly held the reins. Their numbers, it is true, were as yet but few, when compared with the rest of the nation, nor was their property very considerable; but joining most heartily, as well as loudly, in the popular cry against the court, and being generally men of deep thought and gravity, of much reading, and a good moral character, this added so great a weight to their personal authority, as by degrees gave them the lead amongst the *Whigs*. For with this party they originally mixed themselves, and under the cover of their prin-

ciples, as being most plausible, and agreeable to the present constitution, they studiously concealed their own.

In the midst of all this uneasiness and discontent, this violent ferment of parties, opinions, and interests both civil and religious, *Charles the first* succeeded to the throne. This prince had understanding enough to have made a good king, had it been properly cultivated and improved by a right education; had the principles, which were instilled into him from his youth, and the examples, which he every day saw, suffered him to make the best use of the abilities, with which God had furnished him: but bred up with too exalted a notion of the dignity of the high office, with which he was invested, he seems to have taken a resolution, even from the beginning of his reign, never to admit of any controul from his people, nor to suffer his authority to be checked by those, whom he had been taught to look upon, as created for his use, and made subservient to his will and pleasure. He was by nature, kind, gentle, and affectionate to all those, who stood in any private relation to him; but he had acquired a pride and haughtiness from the sublime opinion, which he had conceived of the kingship, which soon became the most prevailing ingredients in his composition, and, swallowing up the good effects of his virtues, exposed him an easy prey to the narrow views of his queen, and to the self-interested flatteries of his ministers. Tho' he would have rejoiced, and looked upon it as his greatest glory, to have made his subjects easy, prosperous, and happy under his reign; yet was he always afraid of hearkening to their complaints and remonstrances, and of making any concessions in their favour, lest his grants should be interpreted either as acknowledgments of his own errors, or of their superiority. Persuaded of his divine right to the implicit obedience of his people in all matters both religious and civil, and satisfied within himself of the rectitude of his intentions, that he meant as well by them as the best of his predecessors, he could not withstand the pleasing temptation of endeavouring to make himself as great as the greatest of them.—not attending to  
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the chief art of making a crown sit easy, which is for the royal wearer to accommodate his measures to the times, contingencies, and circumstances of his subjects, and ever to avail himself of their humours, faults, or prejudices.

Instead, therefore, of falling in with the voice of his people, and bespeaking their future love, favour and confidence, King *Charles* began his reign in express contradiction to what was most agreeable to them; instead of acting by new maxims, and correcting the mistakes of his predecessor, he still continued to employ the same hated minister, and pursued even more arbitrary and violent measures, till the weight of his little finger became heavier than his father's loins. The early misconduct of the prince added fresh numbers to the party, which opposed the government.—The king, on the one hand, was too haughty to amend the faults, which were so loudly charged upon his administration; as his people, on the other, were too rich, and too sensible of the power, which accrued from their wealth, to suffer themselves to be enslaved by an insolent minister, and tamely to see the most sacred barriers of the constitution broken down, and trampled upon, by a court no less arbitrary than rapacious.

It was soon become the king's misfortune, to be in a continual want of money, and that neither the demesnes of the crown, nor the taxes, which had been granted to him, for life, in the beginning of his reign, were found sufficient to supply both the ordinary demands of his household, and those other large expences, which the honour and safety of his kingdom were perpetually calling for. His necessities, therefore, notwithstanding all his prejudice, aversion, and dread of parliaments, obliged him, sometimes, to have recourse to them for aid, in order to extricate himself out of the difficulties, in which he had engaged himself; whilst the Commons, fully sensible of the great weight and importance, which resulted to them from the sole privilege, which they had long enjoyed, of levying money upon their fellow-subjects, resolved to make such an use of  
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their power, as the exigencies of the public required, by insisting upon an immediate redress of their grievances. His Majesty might tell them to their faces, that their behaviour was undutiful, and seditious; and give the name of *Vipers* to such of them, as were supposed to be at the head of the opposition to his measures; but this *asperity of language*, as Lord Clarendon himself properly styles it, availed him little; no subsidies, nor supplies, were to be expected by him, unless the breaches made in the constitution were repaired, and a thorough reformation of the government introduced.

The king was yet but in his third year, when, notwithstanding all the little arts and subterfuges practised by him; notwithstanding all his evasions, equivocations, and tergiversations, he found himself reduced to the necessity of giving his parliamentary consent to the famous *Petition of Right*. As this *Petition*, therefore, is not only an illustrious instance of the power of the house of *Commons*, at this time, and a manifest proof towards which side the balance of power was inclining, but contains in it, likewise, a clear description of the manifold abuse of the prerogative, and the precarious state of the liberty and property of the people of *England*, at this period—I shall beg leave to transcribe a small part of it, tho' the whole be well worthy the serious, and attentive perusal of all such, as want to be brought to a right sense of the comparative excellence of the government, which they, at present, have the happiness to live under. “*The Lords*  
 “*spiritual and temporal, and Commons in parliament as-*  
 “*sembled, do humbly pray your most excellent Majesty, that*  
 “*no man, hereafter, be compelled to make or yield any gift,*  
 “*loan, benevolence, tax, or such like charge, without common*  
 “*consent by act of parliament; and that none be called to make*  
 “*answer, or take such an oath as is not warrantable by the*  
 “*statutes of the realm, or to give attendance, or be con-*  
 “*fined, or otherwise molested or disquieted concerning the*  
 “*same, or for refusal thereof: and that no freeman, by*  
 “*your Majesty's sole command, without cause certified, be*  
 “*imprisoned or detained: and that your Majesty would be*  
 “*pleased*

“ pleased to remove the soldiers and mariners, which have  
 “ been dispersed into divers counties of the realm, and the  
 “ inhabitants, against their wills, compelled to receive them  
 “ into their houses, and there to suffer them to sojourn,  
 “ and that your people may not be so burthened in the time  
 “ to come : and that the commissions for proceeding by martial law, may be revoked and annulled ; and that, here-  
 “ after, no commission of like nature, may issue forth to any  
 “ person or persons whatsoever, lest by colour of them, any  
 “ of your Majesty’s subjects be destroyed or put to death,  
 “ contrary to the laws and franchise of the land.”

The king, therefore, finding by experience, that it was impossible to rule his own way, with the voice and concurrence of his people, desperately resolved to make a bold push, and to attempt to govern without them. Having no inclination to act conformably to the rules prescribed to him by the constitution, the next thing to be done, was to make the constitution bend and submit to his sovereign will—and who dared to dispute, as his father used to express himself, what a king might do in the *plenitude of his power* ! He flattered himself, that, if the House of Commons could not be induced to part with their money in the ordinary and parliamentary method, recourse might justly be had, in cases of extreme necessity, as he was willing to be persuaded the present was, to other and more unusual methods of raising it—hence sprang the various oppressions of *Ship-money*, *Monopolies*, *Star-chamber-fines*, *High-commission-court*, etc. which swell the annals of this unhappy reign.

But this was only heaping fresh fuel upon a fire, which already blazed too bright—the representatives of the people, therefore, when necessity had again called them together, after more than twelve years intermission of parliaments, grew every day more fierce and resolute, oppression having given to them new spirits, and added private resentment to their complaints of injuries done to the public. With pleasure they beheld the increasing indigence of the king, and the severe distresses, which he laboured under for want of money : they saw,  
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with triumph, the superiority, which their command of the property of the nation had, at last, given to them; they pursued their blow with skill, as well as vigour; they rose continually in their demands, nor would the most ample concessions satisfy them, (as they pretended, that the king's word was not to be depended upon) till the whole government was put into their hands—all public business was at an entire stand; confusion every where appeared; and either the king or the commons must become absolute masters of the commonwealth.

With the crown were the *Tories* in general, that is, the greater part of the protestant Nobility and Clergy, and all the Roman Catholics. For not only the queen had ever been their open and assured friend, but even the king himself had shewed them, on almost all occasions, far greater favours and indulgences, than were either consistent with the laws of the realm, or with that inviolable attachment to the church of *England*, which his adherents were ever boasting of—The *Parliamentarians* consisted chiefly of such, as were against the hierarchy, and for introducing farther alterations into the established religion; to this party, likewise, joined themselves all such, as were for limiting the prerogative of the crown, and preventing, for the future, those gross abuses of the regal authority, which they had lately seen committed, and the mischievous consequences of which they still felt. Under this banner, also, and with the most hearty zeal in the cause, fought the *Republicans*, hoping, that, upon the ruins of the throne, they might be, at length, able to erect their favourite scheme of civil polity, an equal commonwealth.

As, therefore, the majority of the people of *England*, the trading and monied part of the nation more especially, fell under one or other of these latter denominations; and as the overbalance, and legal command of property, was thrown entirely into the opposite scale—it is not to be wondered, that victory and success followed the standard of those, who opposed the king, and that the rash and ill-advised monarch, notwithstanding  
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his utmost efforts, found himself, at length, obliged to submit to the superior force.

The sovereign power being now fallen into the hands of the *People*, for want of wisdom in themselves, and honesty in their leaders, instead of being gainers for the immense expence of blood and treasure, which they had so profusely squandered away, they found themselves, at the foot of the account, losers by the exchange, and in a more wretched situation than they were, when the civil war commenced. For in the room of that tyranny which they had so justly dreaded, all the variety of miseries, which attend upon a state of anarchy and confusion, had seized upon them. In the midst of such a contrariety of contending interests; in the midst of so many ignorant, haughty, insolent, and discordant masters, whose voice was to be principally heard?

The first struggle, which deserved the attention of the public, was between the *Whigs* and their friends and allies the *Republicans*, which of the two parties should dictate to the parliament, and take the lead in regulating the disorders of the state, and bringing the national calamities to a happy conclusion. The former were for giving liberty to the captive prince, and for restoring him to the exercise of his antient rights, having first obliged him to submit to the observation of such regulations and restrictions, as should be reasonably deemed sufficient guards to the constitution, against all future abuse of the regal power. The *Republicans*, on the other hand, were against all kinds of reconciliation whatever, pretending, that no fetters could be found strong enough to hold the royal authority within bounds, should it once more be set loose, and suffered to range abroad; that the king's word, with what solemnity soever given, was not to be relied upon; and consequently, that the independence of the nation, and its solid happiness could no otherwise be essentially secured, but in the establishment of a free and equal commonwealth.

The overbalance of property was clearly on the side of the *Whigs*; and there is no question, but they would have carried their point, in favour of the distressed prince, and the antient constitution, had it not been for the intervention of a third power, more weighty, at this juncture, than either of the other two, I mean *the victorious Army*—where such an intractable spirit of enthusiasm, independence, levelling and insolence prevailed, from the highest officers to the lowest soldiers, as made them look upon themselves as superior to all laws, and as the sole arbiters of the fate both of the king and kingdom. The contest therefore was soon found to be unequal; the *Whigs* were forced to give place; whilst the Republicans, supported and encouraged in their views by the army, obtained the momentary command of the state. For, as *Harrington* has justly observed, “where there is a standing army, and no formed government, there the army of necessity will have “a dictatorial power.”

The king was murdered; the old constitution was utterly subverted; nor was there any new form of rule ready to be settled in its room. In the general hurry, confusion, and frequent revolutions of those days, sometimes the *Army*, and sometimes the *new model of parliament*, governed the kingdom; till *Oliver Cromwel*, thro’ an amazing coincidence of circumstances, not material to be insisted upon in this place, found means, at last, to deceive and get the better of both, and to procure himself to be acknowledged by the majority of the nation, as their *Sovereign Head* and *Protector*.

Thus arrived at an height, to which his utmost ambition, in the former part of his life, never dared so much as to look, this favourite of fortune saw two ways before him, by which he might propose to govern the new commonwealth which he had erected, namely, either by the instrumentality of a parliament, as in former times, or by the continued assistance of the army. With a parliament, there was but a small prospect of succeeding to his mind, either in his foreign or domestic

mestic administration, the old house of commons being become entirely republican, and a new one, if left to the free election of the people, he had reason to apprehend, would be either of the same principles, or, what was equally to be guarded against by him, too much inclined to favour the exiled family. To the army, therefore, his application was chiefly bent, wisely concluding, that what was gotten by fraud and violence, would be best preserved by the same means—and tho' he had not a great deal to expect, even from the favour of the soldiery; considering the sullen, discontented, insolent, and levelling temper, which generally prevailed amongst them: yet, notwithstanding all the difficulties which stood in his way, by punishing some, cashiering others and placing his own creatures in their room, and paying their officers very well, he made a troublesome kind of shift, thro' their means, to govern the nation for more than four years together, against the balance of property and the general inclination of the people.

Upon his death chaos immediately returned; a new *Protector*, the *Army*, the old *Parliament*, fanaticism, presbyterianism, independentism, etc. men of all religions, and of no religion, each in their turn seized upon the wretched commonwealth; whilst the bulk of the nation, the men of landed property especially, distracted with such a perpetual series of confusion, torn to pieces, fleeced and oppressed on all sides, sighed for a total change of masters, and ardently longed for the restoration of the antient constitution both in church and state, as the only possible means left to relieve them under their present sufferings. The *Tories* laid hold of the favourable crisis, and once more raised their drooping heads; again they appeared in public, openly defended the cause of the royal family, and encouraged their neighbours in the favourable sentiments, which they were beginning to entertain of the antient manner of government. The *Whigs* frankly joined with them against their present tyrants. The *Army* and *Republicans*, divided amongst themselves, and split into several factions

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and interests, both civil and religious, found themselves unequal to the weight of government; the property and the power were departed from them—unable therefore any longer to oppose with effect the almost-unanimous voice of the whole people, they plunged into the stream, and suffered themselves to be carried down the current with them—their returning master was received with the greatest impotence of joy by all ranks, orders, sects, and professions of men in the nation.

*Charles the second* being restored to the kingdom without any previous conditions, the antient constitution, both in church and state, immediately took place; and the regal power, as from a short eclipse, broke out again in its full and meridian splendour: it seemed even to have received an additional strength from its fall, and to have risen from the earth with renewed vigour. It was presumed, however, that the mature age of the king, the history of his father's tragic fate, and the sad experience of his own tedious banishment, would have taught him to set those bounds to the future exercise of the sovereignty, which the madness of the times had been deficient in exacting from him.

But it was the great misfortune of this prince to have more wit than judgment; tho' he seems not to have been deficient even in this, the most distinguishing character of wisdom, when he would force himself (which was but seldom) to apply to business. He was a lively and entertaining companion, and had sense enough to make himself pass for one of the best-bred and most agreeable men in the world; but he certainly wanted full as much more sense to render him a good one. His father, tho' a good man, could never make a good king; because of a certain pride and haughtiness of temper, which rendered him untractable, self-willed and fond of uncontrollable power. But as a love of empire and command was not the ruling passion of the son, he wanted only honesty and goodness of heart to have rendered him one of the best of princes. His genius directed him rather to shine with men of wit in the circle, than to perplex his  
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understanding, and disturb his tranquillity either in examining the distant consequences of his own actions, or in unraveling the intricate labyrinths of the cabinet.

Placed by a sudden and unexpected revolution of providence at the head of three powerful kingdoms, and exalted in a moment, as it were, from the most abject state of dependance to the highest affluence of wealth and authority, instead of being properly thankful to the almighty arm, which had wrought this wonderful deliverance; instead of exerting all the faculties of his soul; in promoting the true interest of that nation, which had raised him, with such extraordinary marks of confidence and affection, from the lowest despair, he resolved to indulge himself in all that luxury of ease and pleasure, whither his inclinations naturally carried him, and which the misfortunes of his past life had not suffered him to enjoy in all that lavish abundance, which was agreeable to his wishes. If, therefore, he appeared desirous of imitating the example of his grandfather and father, by setting his own will above the laws of his country, it was because such an uncontrollable power furnished him with the perpetual means of gratifying his darling propensities; if he was an enemy to the liberty of his subjects, it was chiefly because their repeated clamours at the misconduct of his administration, disturbed him in the quiet enjoyment of that indolent and pleasurable life, which he had proposed to himself, and in which he had placed his greatest happiness.

The *Tories* having suffered most for the royal cause during the late troubles, and their principles being likeliest to promote the measures of the court, and to preserve the people in their future allegiance, they were, upon the restoration, generally advanced to all the places of honour, trust and profit in the kingdom—so that the Church, the Senate, the Universities, and the Courts of Justice, were every where taught to resound with the favourite doctrine of *passive obedience and non-resistance*. The *Whigs*, on the other hand, who had taken such worthy pains in the last reign to reduce the power of the

crown within certain limits, and to fix that wandering metoor, the *Prerogative*, could not but be extremely displeased to see themselves neglected by the sovereign, and the fruits of all their labour and expence entirely thrown away; to feel the court as wanton as ever in the abuse of its power, and to perceive their giddy countrymen with greediness embracing, and with eagerness propagating those doctrines, which could not in the end but conduct them to certain slavery. But the general voice of the people being, as yet, altogether in favour of their beloved monarch, and the great weight of the national property on his side, they found it necessary to acquiesce in the present situation of affairs, and to wait till a more favourable opportunity offered itself for the redress of their encreasing grievances. The horror of relapsing into their late miseries and confusions made the people suffer many things in the public administration, which would not otherwise so patiently have been born with.

As King *Charles* abounded too much in his own wit to concern himself greatly about the truth of any religion, (both to comply with the earnest solicitations of his mother, and to merit the compassion, and claim the assistance of those courts, whither his necessities had driven him for protection) he suffered himself, during his exile, to be made a convert to that form of worship, from whose professors he saw most probability of being, one time or other, restored to his kingdoms. This obliged him, after his return, to live a perpetual lye; to profess one form of worship outwardly, whilst his heart privately joined itself with a different communion. Hence sprang the abundant miseries of this reign; and from this fertile source was chiefly derived all that ill conduct in the state, which was so loudly and so justly complained of, during the greatest part of this prince's administration—The *Papists* were connived at, supported, and encouraged; the *Laws* of the land were stretched, suspended, relaxed; *Prerogative* every where interposed, presided; the *Dutch* were opposed, distressed, attacked, weaken-

weakened— whilst the common enemy of *Europe*, the encroaching *French*, were strengthened and assisted in all the extensive schemes of ambition, which their enterprising monarch was forming, and every artifice attempted at home, to establish the quiet and settled exercise of that arbitrary power, which, it was imagined, would soon be wanted to defend the legality of his Majesty's measures— But the danger was now come too near to be any longer complaisantly trifled with; so that even that general bribery and corruption, which was so flagrantly practised upon almost all the members of the *long parliament*, by the then *Tory* ministry, was experienced to be of no avail— and of no avail, we may assure ourselves, it ever will be found, whenever the *Constitution* is in any real danger, till the overbalance of property shall be transferred from the hands of the people, where it now is, to the command of the crown.

Tho' the number of *Whigs*, at the beginning of the *long parliament*, hardly amounted to more than fifty, yet, by the misconduct of the court, they were, at length, become the majority of the House of Commons. The whole nation, by degrees, recovered from the pleasing reverie, which had so long possessed it, caught the alarm in season, saw the terrible gulph, which they were just falling into, and were most seriously affrighted, as well on account of the immediate danger, which threatened their own laws, and religion, as for the liberty and independance of *Europe*— and as the profuse liberality of the injudicious monarch had wantonly, and wickedly, squandered away the immense sums, which had, with so much liberality, been granted to him by his subjects, and had thereby reduced him to the greatest streights and difficulties; and as the freedom of *Europe*, and consequently that of this nation, thro' the arms and ambition of the restless *Frenchmen*, or rather thro' the weakness, connivance, and under-hand assistance of the *pensioned Englishman*, grew every day more and more precarious— had not a sudden death saved him from the impending ignominy, he must either have totally changed his former conduct,

and thrown himself upon the affection of his people; and into the arms of the constitution; or he would soon have been most feelingly convinced, that the sound of *Prerogative* was but brute thunder; that the overbalance of power, as well as of property, lay entirely in the hands of his subjects; and had once more, perhaps, to use a phrase of his own, been sent abroad a grazing.

By giving the royal assent to the *bill for taking away tenures in capite and the court of wards*, which was done by King *Charles* immediately after his restoration, and before the consequences of this important step were thoroughly attended to by him, he deprived the crown of one of its greatest and most influencing branches of power, and added, at the same time, so much real weight to the scale of the people, as none of the later schemes of arbitrary government introduced by him, such as *pen-sioning the house of commons, new-modelling the corporations, bribing juries*, etc. could ever after balance, or recover. Both in his father's and grandfather's reign, the representatives of the people had attempted to emancipate themselves from these last remains of their antient slavery and dependence, tho' their proposals had not been attended with the desired success—both these monarchs being upon their guard, and well knowing of what great consequence it was to the advancement of their views and projects, to have the custody and disposal, during minorities, of almost all the large estates in the kingdom. They considered, likewise, that by preserving these feudal rights in the crown, they had continual opportunities of paying and obliging their ministers, and favourites, at the expence of their subjects; of educating the young gentry in such principles, as they liked best; of influencing and corrupting both them and their families with their own fortunes; and of creating, with proper management, the most lasting dependencies in every county, and in almost every borough of the nation. The equivalent, which was given to the king for this concession, was 100,000 *l.* a year; but had the people paid five times that annual sum for it, the gain, upon the  
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the balance, had been entirely on their side. For by the surrender, which the crown, at this time, made in their favour, they were actually put into possession of the only thing, which they wanted, to render them a perfectly free people.

*James the second* had much more of the thoughtful gravity of his father, than of the brisk vivacity of his brother; the qualities of his mind were such as would have adorned the private gentleman, tho' the too high opinion, which he was pleased to entertain of his own abilities, and his intolerable bigotry to a foreign mode of worship, entirely spoiled the prince. He had an experience, capacity, diligence, and turn for public business, which would have rendered both himself glorious, and his people flourishing and happy under his administration, had not his ungovernable zeal for the Roman catholic mode of worship given a perverse bias to all his intentions, and actions. Few persons in his kingdom were better acquainted with the real and essential interests of the *English* nation, than himself; but the misfortune was, that, the views of his subjects by no means coinciding with his own, he could not persuade himself to pursue, what he knew to be most advantageous to them.

As his grateful House of Commons, immediately after his Majesty's accession to the throne, (in acknowledgment of his most gracious, free, and solemn declaration, that he would steadily maintain their religion and laws, as they were then established, and make them the rule of his conduct) had granted him a clear and independent revenue of more than two millions sterling *per ann.*—this was the whole, which he had to hope for from them at present; for more than this he well knew he was not easily to expect from their bounty, without previous restrictions and limitations tacked to the grant. With good oeconomy, (and no prince, to do him justice, ever had more) this revenue, he imagined, would be sufficient to maintain an army at home, (for wars upon the continent, whatever occasion there might be for them, he appeared resolved not to engage in; he had no

enemy to dread, but the zeal of his subjects in defence of their liberty, and religion) and an army raised, and paid by himself out of his own exchequer, officered with thorough-paced Roman Catholics, and absolutely at his devotion, would serve his purpose, he thought, full as well as the parliament itself: for the one, he vainly imagined, might, by degrees, be so modelled, as to serve any design, which he might hereafter have in view; the other, he was sensible, by the experience of the last, as well as of his father's reign, in the present situation of things, never could—his great intention, and the chief aim of all his actions, being, as he persuaded himself, to convert his people from the deadly sin of heresy, the pious directors of his conscience had taught him, that breach of promise, perjury, violation of the laws, and force itself, was not only expedient, but might even religiously, and lawfully be employed upon so holy an occasion.

As King *James* had been educated in the strictest principles of the *Tories*, and, during the late reign, had always shewn himself a fast friend to them and their interests; so, in return, they had ever hitherto been found faithful to him; had thoroughly served him in all his past troubles, and, in reality, had fixed the tottering crown upon his head, when the exclusion bill was so eagerly pushed by his adversaries. Fully persuaded, therefore, that he might certainly depend upon their steady and hearty concurrence with him, upon all their weight and influence in support of whatever measures he might think proper to pursue; and satisfied in his own mind of the truth of those doctrines, which he had heard so often inculcated, of *the divine right of kings to the absolute obedience of their subjects in all cases whatever*—what should hinder him from freely indulging the holy ambition, with which he was possessed, and of exerting, in a good cause, all that independant power, which, he was easily tempted to flatter himself, had been committed to him by God alone? surely, there must be something more than mere sound in all those magnificent things, which  
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were reported of the omnipotence of princes ! he had himself seen the extensive effects of these principles, in the implicit and slavish obedience, which the *French* paid to the commands of their Monarque ; and had lately heard, that, by means of these very doctrines of passive obedience and non-resistance, *Charles the eleventh* had triumphed over the liberties of the *Swedes* ! and why might not he, likewise, in his turn, hope, from the present unanimity of the nation in his favour, to succeed in the great undertaking ?

How easy, as well as natural, was it for the bigotted king to conclude, that, if he alone was the supreme and uncontrollable head of the church, he might root out heresy in what manner he pleased ; and, in imitation of the precedent set him by his predecessor *Henry the eighth*, change the established religion of his kingdom, in order to introduce the so much better form of his own ? it was the indispensable duty of his subjects patiently to submit to all his commands.

Having been made to believe, that the kings of this realm were the true source and origin of the civil laws, and the sole fountain of honour and justice, why might they not, likewise, alter, suspend, or even abrogate, the old constitution of their country ? why might they not, like the king of *France*, or any other sovereign prince upon the continent, collect money, or publish new statutes and ordinances, as they pleased ? as all the rights and privileges of the subject, according to the doctrines which he had imbibed, flowed originally from the royal bounty, was it not still in the reigning prince's power to change, to recal, or to new-model them, as seemed most expedient to his present views ?

Should the murmuring and discontented *Whigs*, as they had formerly done in his father's days, and were lately attempting to do in his brother's, endeavour to stir up the uneasy and discontented people to sedition ; should they go about to persuade them to reject the yoke, which was preparing for them, and to disobey all such commands of their prince, as they might imagine

not to be agreeable to the fundamental laws of the ancient constitution of their country, their party, he was persuaded to believe by his priests and flatterers, was the minority of the nation; however, at all hazards, his army might be depended upon, as well as the power and property of his old friends the *Tories*, as he should attempt nothing, but what was agreeable to the doctrines, which they, for so many years together, had been labouring to establish——*France*, likewise, he had the strongest assurances, might be relied upon, for all the assistance, which it could lend upon so important an occasion, as weakening the protestant interest, and establishing a dependant prince of its own religion upon the throne of *Great Britain*.

Here then it was, that the *Tories* first catch the threatening alarm. Their royal pupil was grown too headstrong for them to manage, and had been taught to draw conclusions from their principles, which, however just they might be, they never meant should be drawn from them: the doctrines, which they had formerly been at so much pains to inculcate, appeared at once in their full absurdity——They saw destruction just going to lay hold upon them, as well as the rest of the nation; they felt their errors; acknowledged them, gave them up. Let it be mentioned to their honour, they even acted in express contradiction to all their former principles; they joined the *Whigs*; they opposed, they relinquished, they deserted, they resisted the wretched prince, who seemed to have placed his surest hopes of success in the daring enterprize he was attempting to execute, in their fast and steady adherence to his interests.——The regal weight was once more found light in the balance, and wanting; the property and power of the people prevailed; the Monarch stood astonished at the sudden revolution; he was confounded, his heart sunk within him, and he was persuaded by his fears, and by his priests, immediately to quit an obstinate and ungrateful nation, whose untamed spirit of liberty would not permit their sovereign to harass, oppress, and tyrannize over them, as he pleased. The

The throne was now become vacant; for the king had, in fact, deserted it, having left the nation without appointing any person in his room, duly commissioned to execute the laws, to call parliaments, to distribute employments, to give a sanction to the acts of state, and to perform all the other offices of the supreme magistrate, which the constitution demanded — what, then, was to be done at this important and critical conjuncture, upon an occasion so entirely new, and unprecedented? desperate necessity cried aloud for something to be immediately fixed upon, in order to restore the internal peace and quiet of the amazed people, and to put the wheels of government into their usual motion—let a *Regency* be appointed, say the secret friends of the abdicated monarch, with full power to perform the regal office during the absence of King *James*, and until he shall submit to receive such conditions, and limitations of his power, as shall be thought most proper to be imposed upon him for the public good. “For necessity and self-preservation are the great laws of nature to societies, as well as individuals, and may well dispense with the strict observation of the common forms of the constitution.”—The remark is certainly just; and therefore, if the people of *England*, at this memorable crisis, and in a case of the most urgent necessity, where the happiness of so many millions of persons was intimately concerned, had an undoubted right to appoint a *Doge*, a *Lord-Archon*, a *Regent*, or *Regency*, with the supreme authority, as is, I think, agreed on all hands, even by the Jacobites themselves, why had they not a right to appoint a *King* also? and what makes the difference between the two cases? for to maintain, that they had a right to do the one, and no right to do the other likewise, appears to be extremely weak and self-contradictory, entirely giving up the *thing* in dispute, and wrangling about a mere *word*.

But our fathers were too wise to lose the substance, whilst they vainly strove to catch at the shadow—they saw that King *James*, by his own voluntary act, had put it

it out of his power any longer to protect his subjects, and that he had, in fact, deserted the government; they, therefore, declared the throne to be vacant; they exerted that original right, which self-preservation, and the laws of nature and society gave them; they followed the undoubted customs of their first ancestors in *Germany*; they acted in entire conformity to the earliest constitution of their own nation, as well as to the primitive practice of their *Gothic* brethren in the several kingdoms of *Spain, France, Lombardy*, etc. — They chose them a new king, one of the royal stock, and the next in succession to the throne, after the family, which had so basely relinquished it; one who had already most happily, as well as gloriously, delivered them from the civil and religious tyranny, which hung over their heads; they chose a hero both able and willing to defend them, as well as the rest of *Europe*, from the yoke of dependency, which was so much to be dreaded from the rapid progress of the *French* arms.

To prevent, however, if possible, such terrible convulsions of the constitution for the future, and to pluck up the very roots of all those mutual jealousies, which had so long subsisted between the subject and the sovereign about their reserved and separate rights—what had formerly been unfortunately omitted at the restoration, the lords, and representatives of the people in parliament assembled, now took care effectually to supply. For before they proceeded to fill the vacant throne, they formed a second *Magna Charta*, another *Bill of Rights*, wherein they set forth and declared their own distinct claims and privileges, and fixed such determinate bounds to the power and prerogative of the crown, as it might not, hereafter, presume to pass. — The new king accepted the throne upon the conditions proposed to him, with the most fixed resolution, at the same time, inviolably to observe them — Thus, at length, after much struggling, and many fierce contentions, were the firm foundations laid for the preservation of domestic peace and union, had we but the wisdom, the moderation, and the virtue,

ture, to acknowledge our own happiness, and to know where to stop.

It was the *revolution*, then, which gave the last and permanent establishment to the popular interest, and immoveably fixed the nodding balance of power to that side, whither it had been so long inclining. “A king of Britain (*says the Dissertation upon Parties*) is now, strictly and properly, what kings should always be, a member, but the supreme member, or head of the political body. Part of one individual, specific, whole in every respect; distinct from it, or independent of it, in none. He can move no longer in another orbit from his people, and like some superior planet, attract, repel, influence, and direct their motions by his own. He and they are parts of the same system, intimately joined and co-operating together, acting and acted upon, limiting and limited, controuling and controuled by one another; and when he ceases to stand in this relation to them, he ceases to stand in any; the settlements by which he governs are plainly original contracts. His institution is plainly conditional; and he may forfeit his right to allegiance, as undeniably and effectually, as the subject may forfeit his right to protection. There are no longer any hidden reserves of authority to be let out on occasion, to overflow the rights and privileges of the people. The laws of the land are known, and they are the sole springs, from whence the prince can derive his pretensions, and the people theirs.

The *Revenue* of the kingdom, under the present auspicious settlement, can be no more squandered away in luxury, riot, and extravagance, or abused to the much more pernicious purposes of advancing the arbitrary measures of the crown, of maintaining forces independently of the consent of parliament, and of overturning the civil and religious liberties of the subject. For the public money, from the moment in which it is granted, is all appropriated by the legislature, and destined to its specific, distinct, and proper uses; the

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*regal expences*, if I may so term it, is wholly separated from that of the kingdom, and the ministers of the crown must be always prepared to give a regular and exact account of the due application of the national treasure, at the hazard of their lives and fortunes—I would not, however, be thought to go so far as to assert, that according to the present method of making our parliamentary grants, it is impossible, that any of the public money should ever be applied to uses different from those originally intended by the *House of Commons*; but what I lay down, as a very advantageous consequence of the *Revolution* in favour of the subject, is, that such saving, or misapplication, can be but small, in comparison with what it frequently, yea generally, was, before the new method of appropriation took place, when the disposal of all parliamentary grants whatever were left entirely to the crown.

The total separation of the *civil list*, as it is usually called, from the ordinary, as well as extraordinary, expences of the kingdom, gave a much greater blow, in the event, to the regal authority, than was, I believe, suspected either by them, who first proposed the alteration, or by him who so readily accepted of it. For, if the power, which arises from wealth, arises only from the superfluity of a man's income, it is impossible that a formidable and lasting influence can be created with a bounded estate, even of a million *per ann.* where the greatest part of it must be unavoidably expended, in maintaining the necessary pomp, and supporting the grandeur of a court.

Nor must we forget to observe further, upon this occasion, that no payments made in money, no payments issuing from customs, and excises, as is the case of the present civil list revenue, can either create or preserve to the receiver half that power and authority over those who pay it, as a like sum would do, was it to arise (as the standing revenues of our kings before the restoration did) from *lands, feudal duties, wardships*, etc.

If to these arguments, which have been rather hinted at, than pressed with the force, which the importance of them deserves, we add, likewise, that the *Trade and Riches* of this nation, its rental, its stock, its whole income, and consequently its power, have been continually augmenting ever since the Revolution, we must, I think, put to silence the rash and incendiary clamours of those interested pretenders both to superior foresight, and to superior patriotism, who are ever sounding in our ears the immenseness of the present Civil List, and the certain danger, which must necessarily result from thence to the liberty of the subject—For what has been thrown into the regal scale, as an equivalent for all that vast accession of weight, which has been made to the popular side of the balance? even the 600,000*l. per ann.* which was granted to King *William*, was more, in proportion, than what is now settled upon his present Majesty, considering the different circumstances of the times, the perpetual advances making by luxury, and the decreasing value of money.

“ At the Revolution, *says the author of Fashion detect-*  
 “ *ed*, the numbers of the people were computed nearly  
 “ at six millions, and by the long peace and necessary  
 “ increase of procreation, this number cannot be at  
 “ present less than seven; or in that proportion. The  
 “ expence of the people, *per head*, was about seven  
 “ pounds at the Revolution, at this time, ’tis univer-  
 “ sally agreed, that this expence amounts to ten. Now,  
 “ as the revenue of the people must infallibly be, at  
 “ least, as much as the people spend, it follows, that  
 “ the revenue of the people was at the Revolution  
 “ forty two millions, and that it is seventy now. The  
 “ people have therefore increased in their annual in-  
 “ come twenty eight millions, (or in that proportion)  
 “ since the Revolution; and, as it is a maxim incon-  
 “ testible in politics, that power always follows prop-  
 “ erty, which must sooner or later operate in every coun-  
 “ try, it is manifest, that the people have acquired in  
 “ the space of fifty years, more solid weight in the scale  
 “ of

“ of this constitution, than they could have gained, or  
 “ can gain, by all the popular laws that ever were  
 “ made, or can be made, in their favour to the end of  
 “ time.” A King of *England*, therefore, who, in such a  
 situation of the balance of property, shall ever attempt to  
 invade the distinct, reserved, and established rights and  
 privileges of his people, either civil or religious, must  
 necessarily fail in the daring undertaking, and share the  
 wretched fate of the willful and ambitious *Stewarts*.

The danger, therefore, to our present excellent estab-  
 lishment, if there really be any, (notwithstanding all  
 the clamor, which we have heard to the contrary) arises  
 altogether from another quarter; and our greatest fear,  
 attention, and precaution ought to be, lest the *People*,  
 or more properly their representatives, who have been  
 gradually gaining both upon the sovereign and the  
 lords, ever since the time of *Henry VII*, should become  
 too heavy for both at last, and exercise more than a  
 due influence upon the other two branches of the legis-  
 lature. For we may be assured, tho’ this is a point not  
 often enough, nor sufficiently considered by us, that our  
 well-poised constitution is overturned, and its exist-  
 ence as much endangered, when the house of commons  
 has too large, as when it has too small a share in the go-  
 vernment—and, perhaps, the inconveniencies to the go-  
 verned would be found full as grievous in the former, as  
 in the latter case; at least, if we may be allowed to draw  
 any consequences from the immense impositions, and  
 that terrible state of misery, and confusion, which hap-  
 pened in the nation in the last century, when the depu-  
 ties of the people had, in fact, seized upon the supreme  
 authority. Whilst the over-balance of property is so  
 entirely in the hands of the people, to contend with  
 them, will be to throw all into their power. Tho’,  
 therefore, in the present situation of things, it is abso-  
 lutely impossible for our kings, without the introduction  
 of foreign forces, to subvert the constitution; yet the  
*Commons*, on the other hand, have it always in their  
 power, and therefore may do it; tho’ I am ready to

own, that such is their moderation, and such their general sense of the happy temperament of the government, which they live under, that there is not the least room afforded us to imagine, that they will attempt any essential innovations. The regal authority has its certain limits already prescribed by the laws, which it cannot pass at any time, without alarming the nation with the immediate outcry of tyranny, and usurpation; whereas, the bounds between liberty and licentiousness having never been duly ascertained, the foundations of the constitution may be sapped and ruined, before we perceive, or attend to the pleasing mischief, which is coming upon us.

What was the wisdom of one age, would be deservedly reputed the folly of another; and pertinaciously to adhere to old customs would, oft times, be the destruction of a state, whose political views were thus contradicted. The maxims and measures of government must not only vary with the manners and circumstances of our own people; but must be adapted, likewise, in some degree, to the changes which happen in the neighbouring nations; to the interests, and novel institutions of all such countries, by whom we may be either greatly profited, or injured.

If, therefore, there was no standing army maintained in this island formerly, it was because the situation of our affairs did not require it; it was because every freeman in the nation was born a soldier, if I may say so, and obliged, under the penalty of forfeiting his estate, to obey the summons of his prince or superior, as often as the state thought a war necessary; it was because we had no manufactures established amongst us to employ our superfluous hands; it was because there was no standing army kept up in *France*, or in the other kingdoms, which were contiguous to us—But the great alteration, which has been made, within a century past, in almost all the neighbouring states upon the continent, from limited now reduced to absolute monarchies; the considerable change, which has happened amongst our

own

own people, where the bow, the sword, and the musket have been laid aside for the plough, the loom, and the rudder; and the very different manner, or art of fighting in use now, from what was formerly practised in *Europe*, when mere strength was as much valued, and did almost as much execution in the day of battle, as the greatest military skill—these considerations, I think, when thoroughly weighed and examined, must soon convince us, that however profound and sagacious the contrivers may imagine themselves to be, a national militia can never be so established, and disciplined, amongst a trading and free people, as to be depended upon in any great emergency, either foreign or domestic.

But after all, whose is this *standing Army*, which carries so much terror in its very name, about which so much clamour has been raised, and so many anniversary harangues made both in parliament and out of it? We call it, indeed, in common conversation, the army of the king, tho' for what reason it is termed so, is not easy to be assigned. Does he, is he able to maintain it out of his own private revenue? Till he can bring this about, however wisely he may be intrusted with the general charge and direction of it for the common good; yet will he never be able so far to influence and command it, as to render it subservient to any private views of his own, distinct from the general interest of the state. Our *standing Army*, as it is at present constituted, paid, commanded, and recruited, will always be a guard to our internal tranquillity, will give the necessary weight to all our foreign negotiations, and secure the independence of our allies; but can never be of any real prejudice to our civil liberties. Whilst our officers, from the highest to the lowest, are all of them our own countrymen, allied many of them to the best families in the kingdom, and have most of them a property independent of their commissions; whilst our forces are paid by the nation, are a part of the nation, generally reside in the nation, and are subject to the same laws with the rest of their brethren, they never can be so modelled, as

to endanger the constitution either in church or state. — It is the army of the people, more properly than of the king; and as it owes its *being* to, and receives its *subsistence* wholly from, the commons of *England*, it must immediately disband itself, as soon as that power shall withdraw its annual support. For “*where an army subsists upon the pay, or riches, of a single person, or of a nobility, that army is always monarchical; but where an army subsists not by the riches of a single person, nor of a nobility, that army is always popular*”—These are truths confirmed by historical experience, and will be admitted as maxims by all impartial and competent judges.

If, however, (in contradiction to the general conclusion, which I have been endeavouring to establish in these papers) it should be urged as an argument of the encreasing influence of the crown, and of the unconstitutional dependence of the other two members of the legislature upon it, that, for these many years past, it has constantly had a majority of both houses, to ratify whatever motions have been made in its favour, and to give a legal sanction to all its measures—to this it may justly be replied, that the parliament is, in reality, no more dependent upon the king, when it confirms his measures, than when it sets a mark of disgrace upon them, and rejects them; any more than the king, in his turn, is dependent upon the parliament, when he gives his assent to bills, which it was in his power to have refused.

That the crown, for some time past, has generally been complimented with the approbation and thanks both of the house of lords, and of the representatives of the people, is, I think, the highest encomium, which can possibly be given to his Majesty, and to those illustrious persons, who, under his auspices, have been thus happily concerned in the administration. The most natural and rational, as well as the most good-natured conclusion, which can be deduced from this uniform correspondence between the several branches of the legislature, is, that all our great affairs of state, both

foreign and domestic, have been conducted with so much care, wisdom, and circumspection, that there has been no room for censuring, nor plausible pretence for publicly condemning them.

“ There is a wide difference, says a late author, between such a majority on the side of the government, as will suffer public business to go on, by placing some confidence in the administration, and by assisting the crown in pursuing vigorous measures, when such are necessary, against its enemies, on the one hand ; and such a majority, on the other, as will hearken implicitly to the voice of a minister, without any attention to the good of the people. Without the former of these, no administration can stand a moment, nor even the government itself subsist. — But of a majority of the latter kind, I thank God, our annals can produce no instance : for I may challenge the most malicious male-content, during all the time, in which the clamours against corruption have run so very high, that they have been echoed by the most corrupt amongst us, to produce one single instance of any law, which hath struck at the root of our constitution, or which hath attempted to undermine our liberties.”

But suppose, for arguments sake only, that we should even go so far as to allow, that all our late parliamentary complaisance to the throne has been owing to the corrupt and undue influence, which we have heard so miserably complained of — what would be the consequence of this concession ? that the crown is increased in real weight and power since the revolution, and that, unless its scale be farther lightened, or more restraints be laid upon it, it is in the ready way to subvert the reserved and distinct rights of the other two branches of the legislature ? quite the reverse ! We cannot, I think, want more cogent evidence to convince us of the weakness and dependency, rather than of the overbearing strength and authority of the crown ; cannot require a more effectual argument to satisfy

By ourselves, that the other members of the legislature, especially the house of commons, are become thro'ly sensible of their own weight and importance in the government, and will therefore be flattered, courted, gratified, and even paid for passing those bills, and confirming those measures, which the wisest of them, at least, know, at the same time, to be absolutely necessary for carrying on the great business of the nation. Very different were the methods, as history fully informs us, which *Henry VIII.* and *Oliver Cromwell* took, when they wanted to procure a majority of the parliament, in favour of their violent, arbitrary, and illegal schemes.

But here, we have been told, the hazard begins; for if the crown has power enough, thro' means of pensions and places, to get some bills to pass, which would not otherwise, perhaps, so easily have been admitted, how do we know where the fatal mischief will stop? and ought we not to be apprehensive, and to use the necessary precautions, lest the same baneful influence be, at length, so far extended, as to get such laws enacted, as shall resign our *all*, our liberties and properties into the hands of a court, ambitious, and ever-watchful of its own private interests?

But this supposition, in whatever light we consider and examine it, will be found groundless and absurd; and the very persons, who, to promote some narrow and selfish views of their own, have taken pains to frighten their well-meaning countrymen with the imaginary phantom, cannot but know so much. It is well observed by *the author of the Dissertation upon Parties*, that "as soon as King *Charles II.* was evidently in an interest different from that of his people, neither their places nor their pensions could hinder courtiers from voting, on many signal occasions, against the court; nor protect either those, who drew the king into ill measures, or those who complied with him in them."—and such, we may depend upon it, will ever be the event, unless it can be imagined, that the majority of both houses of parliament,

ment, that five hundred noblemen, and gentlemen of the first quality, and largest share of property in the nation, (where there is no army, nor external force to compel them to the base act) should suffer themselves to be seduced into a conspiracy, as it were, to deliver up themselves, their wives and children, their relations and friends, bound hand and foot, into the king's power! as easily, and with full as great an appearance of probability, may it be suggested, that the majority of both houses may be persuaded, influenced, or corrupted to put a sword to their own throats, and to destroy themselves.

And *for what* are they supposed capable of thus tamely surrendering their understandings, of committing this abject meanness, and of becoming guilty of so enormous a breach of trust? What is the almighty temptation, which is imagined potent enough to subject them to this unnatural influence, and to blind their eyes to their own certain ruin? *pensions!* and *places!* But the gentlemen of *England* have too long tasted of the delicious sweets of a rational liberty, to part with it for trifles; and are too far advanced in history and politics not to know, that from the moment, in which they have gratified their sovereign with a power superior to the laws of his country, neither their *pensions*, nor their *places*, nor any thing else, which they may chance to be in possession of, can be firmly relied upon as their own, but will all remain entirely at the command and disposal of their arbitrary master.

But after all, tho' some honesty, yet very little sagacity is wanting to make us perceive and acknowledge, that the foundation of these affected outcries against the encreasing power of the crown, and the precarious situation of the *British* liberties, is weak, and not to be relied upon; seeing the experience of every session of parliament, which has been held for these many years past, must abundantly convince every unprejudiced person, that, as the commons of *England* were never richer than they have been since the accep-

sion of the present reigning family to the throne : so they have never possessed a more entire liberty, never had more influence and authority in the state, or enjoyed a greater share of the government—except at one certain period in our annals, which no wise, or good man, I am persuaded, would wish to see revived. Fresh laws are continually passing in their favour; the property of their country lies at their command, to be disposed of as they shall judge most essential to their best interests; almost all places of trust and profit in the nation are conferred upon them; and even the sovereign right of peace and war, however the king may be complimented with the name, in a great degree belongs to them—at least his Majesty will never be advised by his ministers to undertake the one, or to conclude the other, without being previously assured, as far as the nature of the thing will admit, that what he does with regard to these high points, will receive the approbation of the representatives of his people.

When we are told, therefore, as we frequently have been, that *an exclusive place-bill* is absolutely necessary to preserve the balance of our excellent constitution, as such an act would not only put an end to all bribery and corruption for the future, but, likewise, add more weight to the popular scale, and render the lower house of parliament, in the highest degree, independent of their sovereign—let us be ready, also, in our turn, to ask these republicans in masks, the following material questions : whether, for instance, encreasing the power of the house of commons, be really the most natural way of lessening bribery and corruption, in order to obtain a seat in it ? or rather, whether it will not augment the value of the commodity, and consequently greatly enhance the purchase-money ? has not the house of commons sufficient power and weight already ? has it not full as much, as the constitution supposes it should have ? is it in any danger of being deprived of any of its just rights and privileges ? and may not any farther addition made to its authority be extremely dan-

gerous to the general tranquillity? can it, possibly, be of any advantage to the public, to have the commons in a perpetual distrust of, and always at variance with the crown? ever opposing its measures, throwing difficulties in its way, and finding fault with the administration, right or wrong? Upon the supposition of such an absolute inconnection between the executive power and the representatives of the people, as has been contended for, what foreign state would venture to negotiate with us, or, indeed, might safely confide in our resolutions? we should soon become the contempt of our enemies, nor would our allies know how far our assistance might be depended upon. How shall the great affairs of the nation be properly carried on, if the men of business and abilities, who shall be employed by his Majesty, are excluded from the honour of serving their country in the house of commons? or, how shall the high and important offices of state be duly discharged, if such as are best qualified to do credit to them, can *only* be entrusted in parliament?

It is not improbable, that such an exclusive *place-bill*, as we have heard with so much fierceness contended for, was it ever permitted to pass into an act, would indeed render the parliament entirely independent of the king — But what would be the consequence of such an anticonstitutional independence? what effects so material an innovation might, hereafter, produce in this country, I shall not presume to guess; but what are, in fact, the fatal consequences of a similar inconnection between the king and diet of *Poland*, I hope I may take the liberty of laying before my reader, without offending any one — namely, the worst civil regulations of any state in Christendom; the most shocking and intolerable tyranny of the landholders over their boors, or tenants; no encouragement given to trade and industry; a national army almost without pay, without officers, without discipline; fenced towns never in proper repair; borders subject to the continual inroads of all the neighbouring nations; territories still decreas-

ing;

ing; a commonwealth corrupted by foreign gold, distracted and torn to pieces by mutual jealousies and suspicions, with a king at its head, frequently imposed upon it by army of strangers; a republic of little or no weight in the balance of *Europe*.

Much in the same manner, likewise, the several states of the *German* empire are independent of one another, and of their emperor—but are they better governed, or more easy and happy on that account? or, rather, are they not, by this very means, rendered much weaker than otherwise they would be, more obnoxious to disunion, and more liable to be attacked from without, and ruined? “*Germany*, says the famous Mr. *Harrington*, “thro’ a defect in her policy (intending one commonwealth, has made a hundred monarchies in her bowels, whose cross interests twist her guts) has been the theatre of the saddest tragedies under the sun.” To the same purpose is what Mr. *Vertot* has observed in his treatise of the *Revolutions of Sweden*—“so much independence, says that author, “in the subject, an authority so extremely limited in the prince, and so little union or connection between the different orders of the state, have been the occasion, that this kingdom has scarcely ever been free from revolts, and civil wars.” And so well founded, and supported by the history of that country, is the remark of the learned *Frenchman*, that scarcely in *Scotland* itself, another of these inconnected and independent states, do we read of more invasions, seditions, rebellions, depositions, and murdering of princes, than in *Sweden*.

And are these the politics, for which we are persuaded to quit our present excellently-well-tempered constitution? are these the envied blessings of an absolutely independent diet or parliament? —on the contrary, where the executive power of any state is lodged in one hand, and the supreme legislative authority of that state is divided between one, two, or more orders of the subject, in conjunction with such executive power —there the internal peace and prosperity of

that state cannot possibly be preserved for any time; nor the business of the nation, whether foreign or domestic, be transacted with vigour and effect, unless either a natural, or artificial connection and mutual dependence be constantly preserved between such executive power, and the other branches of the legislature.

The substantial blessings, which we at present enjoy under his Majesty's auspicious, wise, and steady government, are certainly very great and numerous; but are these blessings to be either encreased to ourselves, or can we rationally hope, that they will be safely conveyed to our posterity by lessening the regal power, by rendering it contemptible, and throwing more weight into the scale of the house of commons? the hazard is certainly too great for any prudent man to wish the experiment made—"it is often of pernicious consequence to endeavour at being better than well; and not only private men, but bodies politic, will have very ill constitutions, who are always tampering and trying experiments with themselves." - - - - "Our civil constitution, 'tis true, may have its imperfections, but faulty as it is, our ancestors, at the expence of an immense treasure, and an ocean of English blood, have conveyed down liberty to us thro' this channel, and we ought to continue it on, as well as we can, to our posterity, and not to give way to the new-modelling schemes of every extraordinary genius. It would certainly be new-modelling the constitution, in a great measure, to take a considerable part of that power, which is left to the crown, from the crown, and throw it into the hands of the other branches of the legislature."

But we hope better things; and have the most rational grounds to rest assured, that our own essential liberties, his Majesty's just prerogatives, and the antient constitution of the kingdom will be preserved pure and inviolate, whilst the administration of public affairs, under the sovereign, continues to be entrusted in the hands of the *Whigs*—But whenever, thro' some fatal coincidence  
of

of circumstances, either the *Tories*, or the *Republicans*, shall get the superiority, and become masters of the reins of government—then, indeed, it will be time to look about us, to ring the alarm-bell, to put ourselves upon our best guard, and to watch every motion of the desperate enemy.

The *Republicans*, indeed, act entirely upon principle; it is their great business to raise and encourage differences between the king and his subjects, in order to introduce confusion in the state, and thereby to pave an easy way for the admission of their *Oceanas* and *Utopias*. Only the gentlemen, who are in this way of thinking, would do well to reflect a little more attentively, than they usually do, upon the present situation of *Great Britain*; “that is too far advanced in luxury, magnificence, great estates, and high titles, to become a common-wealth in any shape whatsoever; that the envy, emulation, and ambition of the proud and popular land-holders would be a perpetual occasion of their tearing one another, and their country to pieces, were they not all subordinate to one supreme head.”—“Without a previous agrarian, says Mr. *Harrington*, there can be no equal common-wealth:” and “a vicious and corrupt people, as *Machiavel* has well observed, “is not so much as capable of one.”

As to the *Tories*, considered as a set of men, who have sworn allegiance to the prince upon the throne, their political conduct is all over absurd, and self-contradictory. Their principles and practice are at a perpetual strife and variance with each other. They soberly maintain the divine right of kings to the crowns they wear, and yet are ever exclaiming at the succession, as it is settled in their own state, and labouring all they can, with safety to their persons, to weaken and subvert the foundation, upon which it is built.—They pretend to be the warmest and most zealous advocates for the royal prerogative, and yet are always attempting to lessen, and to destroy the reserved rights of their own prince.—They profess to inculcate a passive, as well

well as active obedience to the higher power, which providence has placed over them; and yet strenuously and uniformly oppose every measure, whether right or wrong, which they imagine has a tendency to establish the credit of the king, and to fix his authority in the hearts of his subjects.——They only are the true friends of *Old England*, and the guardians of its best interests; tho', at the same time, they are perpetually murmuring at, and complaining of, every vigorous step, which is taken by the administration to secure our internal tranquillity, and to preserve us from the attacks of foreign foes, by maintaining an equality of power amongst our neighbours upon the continent——Their language, it must be owned, is the language of patriots and honest men, but their actions are the actions of concealed Jacobites. I would, by no means, be thought to fix this odious appellation upon the generality of the persons, who are called *Tories*; for we have their own words, as well as their solemn oaths for it, that they, from their souls, detest and abhor the thing, as well as the name——If it be absurd, therefore, as the author of the *Dissertation upon parties* has told us that it is, to impute to the *Tories*, that now are, the principles, which were laid to their charge formerly, is it not, at least, incumbent upon the gentlemen, who choose to rank themselves under this denomination, either freely to own, that they are become downright *Republicans*, as their actions seem to pronounce them to be; or else to give us a more certain clue, whereby we may be able to trace out, and explain the grounds of their political conduct? for that they are not *Whigs*, nor even affect to be looked upon as such, the inveterate malice, which they too generally express, towards this party, and the detestation, with which they always speak of the measures, which have been pursued by them ever since the revolution, will sufficiently inform us.

Nor let the *Whigs* be charged with inconsistency, and accused of having receded from the principles, which they formerly professed, when they become advocates  
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For the crown, and assertors of the royal prerogative. They always were, and every true, old, consistent *Whig* still is, for maintaining a due balance of power between the several orders of the legislature, well knowing, that in a constitution poised as ours is, the safety of the whole must consist in the reciprocal dependence of all the parts one upon another—This is the sure characteristic, by which they may always be distinguished, they are against an overbearing, a domineering, an unconstitutional power, in whatever hands it may chance to be lodged. Does the balance really incline to the crown? they are for lightening that scale. Does the side of the nobility, or commons, preponderate? They are for throwing more weight into the other scales.—It is tyranny, it is oligarchy, it is confusion, which they oppose; it is *Old England*, which they love; it is the antient constitution, which they are always labouring to preserve in its full strength and vigour, unhurt either by the fierce assaults of open enemies, or the undermining machinations of false friends——“ These  
“ are they who walk, as it were, the perambulations  
“ of the government, and who think it their duty to  
“ keep the true and old boundaries and landmarks of  
“ the state, and not to set up new. These are they  
“ who guard prerogative, privilege and liberty, so as  
“ none of them intrench upon the other.” These are the persons, to whose wisdom and resolution we owe our ever-memorable deliverance from popery and arbitrary power under *King James*; and to whose sagacious moderation we are obliged for the subsequent establishment.—These are the persons, whose councils in the cabinet, and whose conduct and valour in the field reduced the overbearing tyranny of *France*, settled the protestant succession in *England*, and gave independence to the rest of *Europe*——These are the persons, who preserved us from the imminent dangers of the last rebellion; and from whose well-tryed and consistent affection to their king and country, we can alone expect relief, should the same threatening alarms once more invade us.

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In short, a true and consistent *Whig* is a balancer, and a mediator ; always against violence, and against encroachment from whatever quarter it is derived—— Under a *Henry VIIIth*, a *Charles*, or a *James*, he is a countryman ; under a *William*, or a *George*, he is a courtier—— but still a friend to law, truth, justice, and the establishment. Such were the great *Clarendon* and *Southampton* ; such the Lords *Somers* and *Godolphin* ; such was the late Earl of *Orford* ; and such are those illustrious persons, whose great abilities and zeal for the true honour, and lasting prosperity of their country, whose indefatigable industry in the business of the public, and long experience in all the variety of affairs, which concern the state, whether foreign or domestic, have, with the universal approbation, entitled them to the first place, which they most deservedly possess, in his Majesty's favour and councils.



## APPENDIX, NUMBER II.

*An account of all the Cities, Towns, and Burrows, in England and Wales, which have been ever summoned to send members to parliament, with the date of their first returns: extracted chiefly from the three volumes of Dr. Browne Willis's Notitia Parliamentaria.*

## BEDFORDSHIRE.

- BEDFORD<sup>a</sup>.** This burrow sent members to parliament from 23 EDWARD I. and ever since constantly.
- Dunstable<sup>b</sup>** Was summoned 4 EDWARD II. but returned no answer to the sheriff's precept.

## BERKSHIRE.

- WINDSOR<sup>c</sup>** Was incorporated 5 EDWARD I.; sent members to parliament from 30 of this prince to 14 EDWARD III. but then discontinued sending till 25 HENRY VI. since which time it has constantly made returns.
- READING<sup>d</sup>** From 23 EDWARD I. and ever since constantly.

## WALLING-

<sup>a</sup> Bedford belonged to the crown, as part of its antient demesnes. *Madox, Firma Burgi*, p. 131. *Brady, of Burrows*, p. 40. <sup>b</sup> Was made a burrow by Henry I.; but having been granted to the priory, which was afterwards founded in the place, this, I suppose, was the reason, why it returned no answer to the sheriff's writ, as not belonging to the sovereign. <sup>c</sup> Belonged to the crown, as part of its demesnes. *Domesday. Brady of burrows*, p. 41. <sup>d</sup> Was part of the antient demesnes of the crown. *Domesday. Brady's Treatise of Burrows*,

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**WALLINGFORD**<sup>\*</sup> From 23 EDWARD I. and ever since constantly.

**ABINGDON**<sup>\*</sup> Was made a burrow by charter, 3, 4 PHILIP and MARY, with the privilege of sending one member to parliament.

*Newbury.* Tho' this town returned members to serve in parliament 30 EDWARD I. yet it has discontinued ever since.

BUCKINGHAMSHIRE.

**BUCKINGHAM**<sup>\*</sup> Never sent members to parliament, till 36 HENRY VIII.

**WYCOMB**<sup>\*</sup> Has sent members to parliament from 28 EDWARD I. and ever since constantly.

**ACOMONDESHAM**<sup>†</sup> Having returned members to serve in parliament from 28 EDWARD I. to 2 EDWARD II. inclusive, intermitted making any more returns till 21 JAMES I.

WENDO-

*Burrows*, p. 41. <sup>\*</sup> Was part of the antient demesnes of the crown. *Domesday*. *Brady's* appendix, p. 12. <sup>†</sup> The manor of this town, probably, came into the hands of the crown upon the dissolution of the abbey in Henry VIII. time. <sup>\*</sup> Was part of the antient demesnes of the crown. *Domesday*. But having been frequently granted away to other lords, and of no great trade, this we may suppose the reason, why it was not summoned with the other towns in demesne. <sup>†</sup> Was part of the antient demesnes of the crown, *Brady*, p. 41. <sup>‡</sup> Was a town belonging to the antient demesnes of the crown. The burgesses are now returned by the constables of the lord's leet, and were formerly chosen by the homage in the court-baron of the manor. It is observed by Dr. *Brady* in his addenda to his treatise, p. 82. *That wherever the Mayor, bailiffs, and burgesses are chosen by the jury in a court baron, or at the leet; or where the return of parliament members have been, or are now made, by the lord or lady of the manor, or their steward, such towns are towns in antient demesne.* For the manner in which this place, together with Wendover and Marlow, began again to send members

- WENDOVER**<sup>a</sup> Having returned members from 28 EDWARD I. to 2 EDWARD II. made no more returns till 21 JAMES I.
- MARLOW**<sup>1</sup> This burrow, likewise, having made returns from 28 EDWARD I. to 2 EDWARD II. intermitted sending members till 21 JAMES I.
- AYLESBURY**<sup>a</sup> Was incorporated 1 MARY, with the privilege of sending members to parliament.

C A M B R I D G E S H I R E.

- CAMBRIDGE**<sup>a</sup> This burrow has sent members to parliament from 23 EDWARD I. and ever since constantly.
- CAMBRIDGE UNIVERSITY** Was impowered to send members to parliament by special diploma 1 JAMES I.
- Ely**<sup>1</sup> Returned to parliament 23 EDWARD I. but being summoned again 27 of the same prince, the bailiffs returned no answer to the sheriff's precept.

C H E S T E R.

members to parliament, see *Dr. Willis*, vol. 1. p. 118—King *James* himself was much against sending writs to these places, declaring that he was troubled with too great a number of burgesses already.

<sup>a</sup> Was part of the antient demesnes of the crown. *Brady* p. 41.

<sup>1</sup> Was part of the antient demesnes of the crown, and is described as a considerable manor in *Domesday*. It does not appear, when the three abovementioned places were made burrows, or whether they were ever so made. The sheriff directed his first precepts to them, as the king's towns exercising trade, etc. but upon their pleading not to be burrows, and their insufficiency to afford the expence, they probably got themselves excused, till Mr. Hakevill, by his interest in the house of commons, *James* I. restored them to the privilege, which they had so long disused. <sup>a</sup> Was antient demesnes of the crown. *Brady of burrows*, p. 82. <sup>a</sup> Belonged to the crown. *Madox, Firma Burgi*, p. 7. and from many other places both of this treatise, and his *History of the Exchequer*. <sup>o</sup> Belonged to the bishops of Ely, and for that reason excused themselves from

from

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## C H E S T E R.

CHESTER<sup>1</sup>

Never received summons to return members to parliament till the year 1543.

## C O R N W A L L.

LAUNCESTON<sup>1</sup>

From 23 EDWARD I. and ever since constantly.

LESKARD<sup>1</sup>.

From 23 EDWARD I. and ever since constantly.

TRURO<sup>1</sup>.

From 23 EDWARD I. and ever since constantly.

BODMIN<sup>1</sup>.

From 23 EDWARD I. and ever since constantly.

HELSTON<sup>1</sup>.

From 23 EDWARD I. and ever since constantly.

TREGONEY<sup>1</sup>

After two returns to parliament made 23, 35 EDWARD I. this burrow intermitted sending again till 1 ELIZABETH.

LEST-

from obeying the sheriff's writ. <sup>1</sup> This city has been vested in the crown ever since the time of Edward I. The probable occasion of not being summoned earlier, might be on account of its distinct, separate, and palatine jurisdiction. <sup>2</sup> *Launceston* was part of the demesnes of the *Earls of Cornwall*, and was made a *Free Burrow* by *Earl Richard* in the time of *Henry III.* *Brady's* treatise, p. 44. <sup>3</sup> Was part, likewise, of the demesnes of the *Earls of Cornwall*, and made a *free borough* by the charter of *Earl Richard*, 24 *Henry III.* *Brady* 44. <sup>4</sup> Belonged to the demesnes of the antient *Earls of Cornwall*; was made a *free burrow*, by charter, very early after the conquest, and was part of the demesnes of the crown some time after *Edward I.* *Brady* 44. Dr. Willis's account of this burrow, vol. 2. p. 46. <sup>5</sup> Was part of the demesnes of the *Earls of Cornwall*, and made a *free burrow*, by charter, before the reign of *Edward I.* *Brady* 44. <sup>6</sup> Belonged to the crown, as part of its antient demesnes, and was made a *free burrow* by charter from King *John.* *Brady* 44. <sup>7</sup> Was part of the demesnes of the *Earls of Cornwall*, but granted by one of them to a private family; it does not appear to have been created a *free burrow* till *James I.* time; the reason of sending twice in *Edward I.* time, might be on account of its being in the wardship of the crown, and so treated as its royal demesnes.

|                          |   |
|--------------------------|---|
| LESTWITHIEL *            | Having returned members to parliament 33 EDWARD I. intermitted sending till 4 EDWARD II. : since which time it has constantly made its returns. |
| SALTASH <sup>y</sup>     | Sent members to parliament for the first time 6 EDWARD VI.  |
| CAMELFORD *              | Sent members to parliament for the first time 6 EDWARD VI.  |
| WESTLOW *                | Sent members to parliament for the first time 6 EDWARD VI.  |
| GRAMPOUND <sup>b</sup>   | Never sent members to parliament, till 6 EDWARD VI.   |
| PENRYNN <sup>c</sup>     | Sent members to parliament, for the first time, 6 EDWARD VI.  |
| BOSSINEY <sup>d</sup>    | Sent members to parliament, for the first time, 6 EDWARD VI.  |
| ST. MICHAEL <sup>e</sup> | Sent members to parliament, for the first time, 6 EDWARD VI.  |
| NEWPORT <sup>f</sup>     | Sent members to parliament, for the first time, 6 EDWARD VI.  |

ST.

demesnes. Dr. Willis's account of this burrow. \* Was part of the demesnes of the antient Earls of Cornwall, and made a free burrow by charter from *Earl Richard*, 53 *Henry III.* <sup>y</sup> Was made a free burrow by charter from the Valltorts its lords, in the time of *Henry III.*; from whom, in process of time, it came to the crown. *Brady and Willis.* <sup>z</sup> Was antient demesnes of the *Earls of Cornwall*, and made a free burrow by charter from *Earl Richard*, in the time of *Henry III.* <sup>a</sup> Was part of the demesnes of the *Earls of Cornwall*; but very early granted by them to other lords, who made it a corporation. <sup>b</sup> Was antient demesnes of the *Earls of Cornwall*, but made a free burrow by charter from *John of Eltham.* <sup>c</sup> Was part of the demesnes of the *Bishops of Exeter*, and made a free burrow by charter from one of them before *Edward I.* The fee was deprived of this burrow by the crown in the reign of *Edward VI.* *Willis*, vol. 2. <sup>d</sup> Was antient demesnes of the crown, but granted by it to the *Earls of Cornwall*; by one of whom, in *Henry III.* time, it was made a free burrow. <sup>e</sup> Was antient demesnes of the *Duchy of Cornwall*, but very early granted away to private lords. It seems to have been made a free burrow in *Henry III.* time. See *Willis.* <sup>f</sup> Was the demesnes of the canons of

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|                          |  |
|--------------------------|--|
| ST. IVES                 | Never returned members to parliament, till 4, 5 PHILIP and MARY. |
| FOWEY <sup>b</sup>       | Sent members to parliament, for the first time, 13 ELIZABETH.    |
| EASTLOW <sup>b</sup>     | Sent members to parliament, for the first time, 13 ELIZABETH.    |
| ST. GERMANS <sup>c</sup> | Sent members to parliament, for the first time, 5 ELIZABETH.     |
| ST. MAWS <sup>k</sup>    | Never sent members to parliament before 5 ELIZABETH.             |
| KELLINGTON <sup>*</sup>  | Never made any return to parliament, till 27 ELIZABETH.          |

## C U M B E R L A N D.

|                            |   |
|----------------------------|---|
| CARLISLE <sup>l</sup>      | Has returned members to parliament from 23 EDWARD I. and ever since constantly.   |
| COCKERMOUTH <sup>m</sup> , | Having returned members to parliament 23 EDWARD I. never made any other return till 16 CHARLES I. by exprefs order of the house of commons. |

*Egre-*

St. Stevens; who, it is probable, endowed it with the privileges of a *free burrow*. Upon the reformation it came into the hands of the crown, which, finding it honoured with the stile of burrow, might order writs to be directed to it, together with the other burrows of this county—The reader will less wonder, how so many of these little *Cornish* burrows came to have this privilege of sending members to parliament conferred upon them, when he considers with what a high hand the Duke of Northumberland governed both the king and kingdom at this juncture. See *parliamentary history of England*, vol. 3. p. 263, 265. <sup>n</sup> Was antient demesne of the Earls of Cornwall; but granted away by one of them, in the time of Richard I. to the priory of Triwardreth; upon the dissolution of which, in Henry VIIIth reign, it came to the crown.

<sup>b</sup> Seems to have been part of the demesnes of the old *Earls of Cornwall*, tho' very early granted by them from the body of the earldom to some private person, who endowed it with its privileges. See *Willis*, vol. 2. p. 102. <sup>c</sup> The manor of this place was antiently in the Bishops of Exeter, and priory of St. Germans—the

**Egremond**<sup>a</sup> Made one return 23 EDWARD I. but has discontinued ever since.

**D E R B Y S H I R E.**

**DERBY**<sup>o</sup> Returned members to parliament 23 EDWARD I. and ever since.

**D E V O N S H I R E.**

**EXETER**<sup>r</sup> Returned members to parliament 29 EDWARD I. and ever since.

**TOTNESS**<sup>1</sup> Returned members to parliament 23 EDWARD I. and ever since.

**PLYMOUTH**<sup>r</sup>, Having returned members to serve in parliament 26, 33 EDWARD I. 4, 7 EDWARD II. intermitted making any more returns till 20 HENRY VI.

**OKEHAMPTON**<sup>r</sup>, Having sent members to parliament 28 EDWARD I. and 7 EDWARD II. inter-

share, which belonged to the latter, came to the crown upon the dissolution of the priory in the time of *Henry VIII.* <sup>a</sup> The royalty and manor were both in the crown, when it was encouraged to return members, for the first time, by *Queen Elizabeth.* *Willis*, vol. 2. p. 166. <sup>o</sup> Belonged, as demesnes, to the old Earls of Cornwall; who conferred some privileges upon it, before it was granted by them to private proprietors. <sup>1</sup> This city belonged to the crown, as part of its demesnes. *Willis*, vol. 2. 192. <sup>a a</sup> Both these places were the demesnes of private proprietors, and made *free burrows* by charter from their lords before the time of *Edward I.* The 23d of this prince the burrow of *Cockermouth* was in the hands of the crown by the death of *Isabel de Lucy*, whose dower it had been, tho' afterwards regranted to other branches of her family—and this was, probably, the case of its neighbour *Egremond*—and hence we may account, why they sent once to parliament, tho' afterwards they discontinued till the house of commons restored the former of them: <sup>o</sup> Was part of the antient demesnes the crown. *Madox, Firma Burgi*, p. 8. and *Hist. Exchequer*, 278. 280. <sup>r</sup> Was the king's city, having been built upon the royal demesnes. *Brady*, p. 82. *Madox*, ut supra. <sup>1</sup> *Totness* belonged to a private lord, but was made a *free burrow* by charter, 7 *John.* *Willis*, vol. 2. p. 280. <sup>r</sup> Was part of the antient demesnes of the crown; and tho' granted away to private lords, reverted again to the crown. *Willis*, vol. 2. p. 287. and appendix. <sup>r</sup> *Okehampton* is styled a burrow

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- intermitted making any more returns, till it was summoned by order of the house of commons 16 CHARLES I.
- BARNSTAPLE** \* Has sent members to parliament ever since 23 EDWARD I.
- PLIMPTON** \* Has returned to parliament ever since 23 EDWARD I.
- DARTMOUTH** \* Returned members to serve in parliament 26 EDWARD I. but made no more returns till 24 EDWARD III.
- HONYTON** \*, Having returned to parliament 28 EDWARD I. and 4 EDWARD II. intermitted making any more returns, till it was summoned by order of the house of commons 16 CHARLES I.
- TAVESTOCK** \* Returned members to parliament 23, 33 EDWARD I. 19 EDWARD II. 4 EDWARD III. and ever since constantly.
- ASHBURTON** \*, Having made two returns to parliament 26 EDWARD I. and 8 HENRY IV. intermitted making any more returns, till new summons were directed to be sent to it by order of the house of commons. It is not incorporated.
- BEREALSTON.** It is no corporation, and never sent members to parliament till 27 ELIZABETH.

TIVER-

in Domesday book—it was granted by the Conqueror to a private proprietor; how it came, at first, to be summoned to parliament, whether as a burrow in general, or being, perhaps, in the temporary wardship of the crown, I know not; but certain it is, that the reasons for laying this imposition upon it were not very strong, as the summons was soon discontinued. \* Was part of the ancient demesnes of the crown. Brady, 41, and incorporated by Henry I. *Risden's Survey of Devonshire*, 411. \* Was ancient demesnes of the crown; and made a free burrow by Baldwin de Redvers, 26 Henry III. \* *Dartmouth* belonged to a private lord, but was, probably,

|                              |  |
|------------------------------|--|
| <b>TIVERTON</b> <sup>a</sup> | Was made a corporation 13 JAMES I. and impriviledged by that prince to send members to parliament.   |
| <i>Lidford</i> <sup>b</sup>  | Is stiled a burrow, and returned members to parliament 28, 30 EDWARD I. but has discontinued ever since.   |
| <i>Bradnoch</i>              | Is a mayor-town, and returned members to parliament 6 EDWARD II. but has discontinued ever since.  |
| <i>Crediton</i>              | Returned two members to parliament 35 EDWARD I. but has since discontinued.  |
| <i>Fremington</i>            | Is stiled a burrow, and returned members to parliament 6 EDWARD III. but has since discontinued.   |
| <i>Modbury</i>               | Returned members to serve in parliament 34 EDWARD I. but has discontinued ever since.  |
| <i>Souib-Moulton</i>         | Sept members to parliament 30 EDWARD I. but has discontinued ever since.   |
| <i>Torrington.</i>           | This burrow having sent members to parliament from 23 EDWARD I. to 45 EDWARD III. was afterwards discharged from this service upon its own petition to the king. |

DORSET-

probably, made a *free burrow* in King *John's* time. The charter of the town was renewed by *Edward III.* since which time it has much flourished, and sent members to parliament. <sup>x</sup> Was no burrow at the time of the conquest, but the demesnes of private proprietors, by whom it was made a *free burrow*, etc. The occasion of its sending to parliament once in *Edward I.* and once in *Edward II.*'s time, might be on account of its being in the hands of the crown during some minority; or by mistake, perhaps, of the sheriff. <sup>y</sup> Was part of the antient demesnes of the crown, but afterwards granted to the abby built in the town. *Brady* 41. <sup>z</sup> Was part of the antient demesnes of the crown; and neither burrow nor corporation when first summoned temp. *Edward I.* <sup>a</sup> Was part of the antient demesnes of the crown; tho' very early granted away to private proprietors. <sup>b</sup> Was part of the antient demesnes of the crown.

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## D O R S E T S H I R E.

- DORCHESTER**<sup>c</sup> Returned members to serve in parliament from 23 EDWARD I. and ever since constantly.
- LYME-REGIS**<sup>d</sup> Returned members to serve in parliament from 23 EDWARD I. and ever since constantly.
- BRIDPORT**<sup>e</sup> Returned members to serve in parliament from 23 EDWARD I. and ever since constantly.
- SHAFTSBURY**<sup>f</sup> Returned members to serve in parliament from 23 EDWARD I. and ever since constantly.
- WAREHAM**<sup>g</sup> Returned members to serve in parliament 30, 33, 35 EDWARD I. 5, 7 EDWARD II. 2 EDWARD III. and ever since constantly.
- MELCOMBE**<sup>h</sup> Returned members to serve in parliament 8 EDWARD II. and ever since constantly. It was summoned 33, 34 EDWARD I. but the bailiffs of the town returned no answer to the writ.
- WEYMOUTH**<sup>i</sup> Returned members to serve in parliament 12, 19 EDWARD II. 9 EDWARD III. and ever since constantly.

Pool<sup>k</sup>

crown. *Domesday*. <sup>c</sup> Was a manor belonging to the antient demesnes of the crown. *Brady* 81. *Madox, Exchequer*, 195. <sup>d</sup> Was part of the demesnes of the crown, and made a free burrow by charter from *Edward* I. in 12th year of his reign. *Brady* p. 82. <sup>e</sup> Was part of the antient demesnes of the crown, and made a free burrow by charter 38 *Henry* III. *Brady* 40. *Madox, Exchequer*, 290. <sup>f</sup> Belonged to the crown, as part of its antient demesnes, *Domesday*. *Dr. Willis*, vol. 2. p. 476. <sup>g</sup> Was antient demesne of the crown, and made a free burrow by charter 12 *John*. *Domesday*. *Madox, Exchequer* p. 283. <sup>h</sup> Belonged to the crown, as part of its antient demesnes; was made free by charter from *Edward* I. which charter was afterwards confirmed and enlarged 3. 11. *Edward* II. *Brady* 41. *Dr. Willis*, vol. 2. p. 451. <sup>i</sup> Was probably

**POOL** <sup>k</sup> Having returned members to serve in parliament 36, 42 EDWARD III. made no more returns till 31 HENRY VI.

**CORFE-CASTLE** <sup>l</sup> Never returned members to parliament before 14 ELIZABETH, by whom it was incorporated, and vested with this privilege.

**Blandford** Returned members to serve in parliament 23 EDWARD I. and 22 EDWARD III. but never since.

#### D U R H A M.

**DURHAM** <sup>m</sup>. Neither the city nor the county of Durham ever returned members to parliament, till 31 CHARLES II.

#### E S S E X.

**COLCHESTER** <sup>n</sup> Returned members to serve in parliament 23 EDWARD I. and ever since constantly.

**MALDON** <sup>o</sup> Returned members to serve in parliament 2 EDWARD III. and ever since constantly.

**HARWICH** Having made one return to parliament 17 EDWARD III. discontinued sending

bably antient demesnes of the crown, as the neighbouring corporation of Melcomb undoubtedly was. <sup>k</sup> Was part of the antient demesnes of the crown. It was a free burrow 15 Edward III.; but its privileges were greatly augmented by charters 11, 27 Henry VI. *Brady* 81. *Willis*, vol. 2. p. 408. <sup>l</sup> Was antient demesnes of the crown. *Brady*, p. 41. and obtained the privilege of sending members to parliament at the request of *Cbrist. Hatton*, Esquire; to whom the manor was granted by *Queen Elizabeth*. *Willis* vol. 2. 497. <sup>m</sup> That this county and city were exempt from returning members to serve in the king's parliament was owing to the almost regal jurisdiction, which the bishop, as temporal as well as spiritual lord, exercised over both. <sup>n</sup> Was the king's town, and made part of the antient demesnes of the crown. *Brady* 40. *Madox*, *Firma Burgi*, p. 7. <sup>o</sup> Belonged to the crown, as part of its antient demesnes,

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sending any more till it was incorporated 12 JAMES I.

### G L O U C E S T E R S H I R E.

- GLOUCESTER**\* Returned members to serve in parliament 23 EDWARD I. and ever since constantly.
- CIRENCESTER**† Never returned members to serve in parliament before 13 ELIZABETH.
- TWICKENHAM**‡ Was made a burrow 7 JAMES I. and empowered by him to send two members to parliament.

### H E R E F O R D S H I R E.

- HEREFORD**† Sent members to parliament from 23 EDWARD I. and ever since constantly.
- LEMPSTER**† Returned members to serve in parliament from 23 EDWARD I. and ever since constantly.
- WOBURN**‡ Having sent members to all the parliaments of EDWARD I. it afterwards discontinued sending, till summoned by order of the house of commons 16 CHARLES I.
- Bromyard** Having returned members to parliament 33 EDWARD I. has ceased ever since. *Ledbury*

demefnes. *Brady* and *Madox*, as above. \* Was vested in the crown, as part of the royal demefnes. *Madox, Firma Burgi*, 7. 8. 132. *History of the Exchequer*. † Was antient demefnes of the crown. *Brady* 41. ‡ Belonged to the crown, as part of the royal demefnes. *Brady* 41. § The property of this city was originally vested in the crown. *Madox, Firma Burgi*, p. 12 ¶ Was part of the royal demefnes. *Brady* 41. \* Was, probably, part of the demefnes of the crown; because the returning officers are the constables. See notes above at *Admoneshaw*. † Was part of the royal demefnes. *Brady* p. 83. in which place it is asserted, that Hertford sent only eighteen times to parliament before 22 James I. \* See what both *Brady* in his animadversions upon *Petit*, and *Madox*, in his history of the Exchequer, have said of this burrow; both

- Ledbury* Is stiled a burrow, and, as such, returned to parliament 23, 33 EDWARD I. but never since.
- Rofs* Returned to parliament 33 EDWARD I. but never since.

# HERTFORDSHIRE.

- HERTFORD* \*. Tho' this burrow had returned members to serve in parliament six times in EDWARD I. reign, eight times EDWARD II. five times EDWARD III. yet after the 50th year of this prince it made no more returns, till 21 JAMES I.
- ST. ALBANS* \*. Is said to have returned members to serve in parliament 35 EDWARD I. 1, 2, 5 EDWARD II. 2, 4, 5 EDWARD III. tho' after this time it made no more returns, till it was incorporated 7 EDWARD VI.
- Berkhamstead* \*. Returned members to serve in parliament 14 EDWARD III. but never before nor since.
- Stortford* Sent members to parliament five times in the reign of EDWARD II. and three times in the reign of his successor, but never since.

# HUNTINGDONSHIRE.

- HUNTINGDON* \*. Returned members to serve in parliament 23 EDWARD I. and ever since constantly. KENT.

both of whom agree, that it belonged to the abbey of the town, and made part of its demesnes — It certainly, therefore, had no right to be summoned to parliament with the other burrows, that had been made free by the king; and if it was summoned, it was entirely owing to the partiality of the sheriffs of Hertfordshire in their favour. \* Was part of the demesnes of the crown.

*Madox, Exchequer* 409. \* Belonged to the crown, as part of the royal demesnes. *Domesday*. It was made a free burrow by charter from

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### K E N T.

- CANTERBURY<sup>a</sup>** Returned members to serve in parliament 23 EDWARD I. and ever since constantly.
- ROCHESTER<sup>b</sup>** Returned members to serve in parliament 23 EDWARD I. and ever since constantly.
- MAIDSTONE<sup>c</sup>** Returned members to serve in parliament, for the first time, in the reign of EDWARD VI.
- QUEENBOROUGH.** The first return of this borough was made 13 ELIZABETH.
- Greenwich<sup>d</sup>** Returned members to serve in parliament 4, 5 PHILIP and MARY, but never since.
- Tunbridge** Sent members to parliament 23 EDWARD I. but never since.

### L A N C A S H I R E.

- LANCASTER<sup>e</sup>** Returned members to parliament 23, 26, 33, 35 EDWARD I. 8, 19 EDWARD II. 1, 2, 3, 4 EDWARD III. but after that made no more returns till 1 EDWARD VI.
- PRESTON<sup>f</sup>** Having returned members to serve in parliament 23, 26, 33, 35 EDWARD I. intermitted making any more returns till the time of EDWARD VI.

### WIGAN.

from King John. <sup>a</sup> Was one of the king's cities, as part of the royal demesnes. *Madox, Exchequer* 409. *Domesday*. <sup>b</sup> Was part of the antient demesnes of the crown. *Madox*, as above. <sup>c</sup> This town was incorporated by charter from Edward VI. and vested with the privilege of sending members to parliament. <sup>d</sup> A royal manor. <sup>e</sup> Belonged to the crown originally, but was granted from it to the Earls of Lancaster. It was made a *free burrow* by charter 4 *Richard* I.; it was frequently in the hands of the crown by deaths, minorities, etc. <sup>f</sup> Was part of the antient demesnes of the crown, and made a *free burrow* by charter from *Henry* II.

*Brady*

*with the Date of their First Returns.* 411

- WIGAN.** Tho' this place returned to parliament 23, 35 EDWARD I. yet it made no other return till 1 EDWARD VI.
- LIVERPOOL** Returned members to parliament 23, 35 EDWARD I. but made no other return till 1 EDWARD VI.
- NEWTOWN<sup>s</sup>** Returned members to serve in parliament, for the first time, 1 ELIZABETH.
- CLITHEROE<sup>s</sup>.** The first return made by this place to parliament was 1 ELIZABETH.

LEICESTERSHIRE.

- LEICESTER<sup>s</sup>** Has constantly returned to parliament ever since 23 EDWARD I.

LINCOLNSHIRE.

- LINCOLN<sup>s</sup>** Has constantly sent members to parliament ever since 23 EDWARD I.
- GRIMSBY<sup>s</sup>** Has constantly made returns to parliament ever since 23 EDWARD I.
- STAMFORD<sup>s</sup>** Having returned members to parliament 23, 26, 28, 30, 33, 34 EDWARD I. and 15 EDWARD II. made no other return till 1 EDWARD IV. by whom it was made a corporation.
- BOSTON<sup>s</sup>.** The first return made to parliament by this burrow, was 1 EDWARD VI.

GRANT-

*Brady* 46. *Firma Burgi* 130. \* Was part of the antient demesnes of the crown. *Brady* 82. It is not incorporated. <sup>b</sup> This little place is not incorporated. <sup>i</sup> Was the king's town, and reckoned as part of the demesnes of the crown. *Madox, Firma Burgi*, cap. 11. It was made a free burrow by charter from King John: \* Was part of the royal demesnes. *Brady. Madox passim.* <sup>i</sup> Was antient demesne-land of the crown. *Brady* 41. *Firma Burgi* 129. <sup>a</sup> Was part of the antient demesnes of the crown. *Brady* 51. <sup>a</sup> It was incorporated, and made a *free burrow* by charter the last year

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**GRANTHAM<sup>a</sup>.** The first return to parliament made by this burrow was -- EDWARD IV.

**M I D D L E S E X.**

**LONDON<sup>b</sup>.** Has constantly sent members to parliament ever since 23 EDWARD I.

**WESTMINSTER** Sent members to parliament, for the first time, 1 EDWARD VI.

**M O N M O U T H S H I R E.**

**MONMOUTH** Was first impriviledged to send members to parliament by HENRY VIII.

**N O R F O L K.**

**NORWICH<sup>c</sup>.** Has returned members to serve in parliament from 23 EDWARD I. and ever since constantly.

**LYNN-REGIS<sup>d</sup>.** Has returned to parliament constantly, ever since 23 EDWARD I.

**YARMOUTH<sup>e</sup>.** Has returned to parliament constantly, ever since 23 EDWARD I.

**THETFORD<sup>f</sup>.** Never made any returns to parliament before 1 EDWARD VI.

**CASTLERISING** Never made any return to parliament before the last of PHILIP and MARY.

**N O R T H A M P T O N S H I R E.**

**NORTHAMPTON<sup>g</sup>.** Has returned members to serve in parliament ever since 23 EDWARD I. without interruption.

**PETERBOROUGH<sup>h</sup>.** The first return of this city was made 1 EDWARD VI.

**BRACK-**

year of Henry VIII. \* It was part of the demesnes of the crown. *Brady* 41. Edward IV. incorporated it, and made it a free burrow. <sup>b</sup> Was the king's city, and looked upon as part of the antient demesnes of the crown. *Madox* passim. <sup>c</sup> Was the king's city, and an antient demesne of the crown. *Domesday*, and *Madox's works* passim. <sup>d</sup> Was the antient demesnes of the crown, and made a free burrow by

*with the Date of their First Returns.* 413

**BRACKLEY.** The first return of this burrow to parliament was made 1 EDWARD VI.  
**HIGHAM-FERRERS.** Was incorporated 2, 3 PHILIP and MARY, and impriviledged to send one member to parliament.

**NORTHUMBERLAND.**

**NEWCASTLE UPON TYNE.** Returned members to serve in parliament 23 EDWARD I. and ever since constantly.

**MORPETH.** The first return made by this burrow was 1 MARY.

**BERWICK.** Never sent members to parliament, as is most probable, till the reign of HENRY VIII.

*Bamburgh.* Sent members to parliament 23 EDWARD I. but never since.

*Corbrigg.* Sent members to parliament 23 EDWARD I. but never since.

**NOTTINGHAMSHIRE.**

**NOTTINGHAM.** Returned members to serve in parliament 23 EDWARD I. and ever since constantly.

**RETFORD.** Having returned members to serve in parliament 9 EDWARD II. intermitted sending again till the 13 ELIZABETH.

**NEWARK.** Was incorporated by CHARLES II. and impriviledged to send two members to parliament on account of its loyalty to his father.

**OXFORD-**

by charter 5 John. <sup>1</sup> Was part of the royal demesnes. *Domesday.* *Brady's appendix.* <sup>2</sup> Was the demesnes of the crown. *Domesday.* <sup>3</sup> Was part of the royal demesnes. *Domesday.* <sup>4</sup> Upon the dissolution of the abby, this town was given to the dean and chapter, whose steward is the returning officer — as is the case of the city of Westminster. <sup>5</sup> Was one of the royal manors. *Brady 82.* <sup>6</sup> Was the king's burrow. *Brady's appendix, N° 10.* <sup>7</sup> Was antient demesnes of the crown. *Brady 401.* <sup>8</sup> Was the demesnes

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O X F O R D S H I R E.

- OXFORD-UNIVERSITY** Sent members to parliament 1 JAMES I. by virtue of a diploma from that prince.
- OXFORD-CITY**<sup>b</sup> Returned members to serve in parliament 23 EDWARD I. and ever since constantly.
- WOODSTOCK**<sup>c</sup> Having sent members to parliament 30, 33 EDWARD I. as likewise to the three first parliaments of MARY, intermitted making any more returns till 13 ELIZABETH.
- BANBURY** Was incorporated by Queen MARY, and imprivileged by her to send one member to parliament.
- Burford* Sent members to parliament 34 EDWARD I. but never since.
- Chipping-Norton* Sent members to parliament 28, 30, 33 EDWARD I. but never since.
- Dadlington* Returned to parliament 30, 33 EDWARD I. but never since.
- Whitney* Returned to parliament 33, 34 EDWARD I. 1, 8, 8 EDWARD II. 4 EDWARD III. but never since.

S A L O P.

- SHREWSBURY**<sup>d</sup> Returned members to serve in parliament 23 EDWARD I. and ever since constantly.
- BRIDGENORTH**<sup>e</sup> Returned members to serve in parliament 23 EDWARD I. and ever since constantly.
- LUDLOW** Was incorporated by EDWARD IV. and returned members to serve in parliament 12 of his reign.

W E N -

mesnes of the crown. *Madox, Exchequer* 228. <sup>b</sup> Belonged to the crown, as part of the royal demesnes. *Madox, Firma Burgi*, p. 7. <sup>c</sup> Was part of the antient demesnes of the crown. *Brady* 41. <sup>d</sup> Belonged to the crown as part of the royal demesnes. *Madox,*

**WENLOCK** Was impriviledged by charter of EDWARD IV. to send one member to parliament—I know not how it came afterwards to return two.

**BISHOPS CASTLE.** The first return to parliament made by this place was 16 ELIZABETH.

S O M E R S E T S H I R E.

**BRISTOL** <sup>f</sup> Has constantly sent members to parliament ever since 23 EDWARD I.

**BATH** <sup>s</sup> Returned members to serve in parliament 23 EDWARD I. and ever since constantly.

**WELLS** Has returned members to serve in parliament constantly, since 23 EDWARD I.

**TAUNTON** <sup>h</sup> Has sent members to parliament constantly, ever since 23 EDWARD I.

**BRIDGEWATER** Returned members to serve in parliament 23 EDWARD I. and ever since constantly.

**MINEHEAD.** The first return for this burrow was made 1 ELIZABETH.

**ILCHESTER** <sup>i</sup> Returned members to parliament in the reigns of EDWARD I. EDWARD II. and to the 34 EDWARD III.; after that it intermitted sending till 12 EDWARD IV. when it ceased again till 18 JAMES I.

**MILBOURN-PORTR** <sup>k</sup> Having returned members to parliament 26, 28, 33, 35 EDWARD I. ceased to make any more returns, till

*Madox, Exchequer and Firma Burgi, passim.* \* Was antient demefnes of the crown. *Madox, Firma Burgi, p. 8.* <sup>f</sup> Was part of the antient royal demefnes. *Madox, Firma Burgi, p. 8.* <sup>s</sup> Was the royal demefnes. *Domesday.* <sup>h</sup> Belonged to the royal demefnes. *Domesday.* <sup>i</sup> Was the king's town, and part of the royal demefnes. *Domesday apud Brady, p. 81.* <sup>k</sup> Was part of the royal demefnes.

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till it was summoned by order of the house of commons 15 CHARLES I.

- Abbridge*<sup>1</sup> Returned members to parliament 23 EDWARD I. 7, 15, 16 EDWARD II. and 17 EDWARD III. but has intermitted sending ever since.
- Charde* Returned members to parliament 28 EDWARD I. 6, 7, 8, 15, 16, 19 EDWARD II. and 1, 2 EDWARD III. but since that has made no more returns.
- Dunstar* Sent members to parliament 34 EDWARD III. but never since.
- Glastonbury*<sup>2</sup> Was summoned to send members to parliament 12 EDWARD III. but the bailiffs of the town returned no answer to the sheriff's precept.
- Langport*<sup>3</sup> Returned members to serve in parliament 33, 34, 35 EDWARD I. but never since.
- Montacute* Returned members to parliament 33 EDWARD I. but never since.
- Stoke-Cury* Returned members to parliament 34 EDWARD I. but never since.
- Watchet* Returned members to parliament 30 EDWARD I. but never since.

*Were*<sup>4</sup>

demefnes. See *Brady*, as above. <sup>1</sup> Was antient demefnes of the crown. <sup>2</sup> The town belonged to the abbots, and for that reason, probably, the bailiffs would not answer the sheriff's precept. <sup>3</sup> Was part of the royal demefnes. *Firma Burgi*, p. 8.

<sup>4</sup> The last nine places are small towns in Somersetshire; and were, probably, except *Glastonbury*, all of them part of the antient demefnes of the crown—Nor is it to be wondered, that so large a proportion of the members should be sent from the western counties, as the greatest quantity of demefne land lay there, having been, for so many years, the seat and habitation of the kings of Weſſex, before they conquered the other kingdoms of the heptarchy.

<sup>5</sup> Was the king's town and antient demefnes. *Domeſday*. *Brady*. *Madox*.

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*Were* ° Sent members to parliament 34, 35  
EDWARD I. but never since.

S O U T H A M P T O N S H I R E.

SOUTHAMPTON<sup>2</sup> Sent members to parliament 23 ED-  
WARD I. and ever since.

WINCHESTER<sup>3</sup> Sent members to parliament 23 ED-  
WARD I. and ever since.

PORTSMOUTH<sup>1</sup> Sent members to parliament 23 ED-  
WARD I. and ever since.

ANDOVER<sup>1</sup> Having returned members to serve  
in Parliament 23 EDWARD I. and  
all the rest of this prince's parlia-  
ments, as likewise 1 EDWARD II.  
it afterwards intermitted sending  
till 27 ELIZABETH.

YARMOUTH Returned members to parliament 23  
EDWARD I. but, tho' summoned  
again in this prince's reign, yet it  
made no more returns till 27 ELI-  
ZABETH.

NEWPORT<sup>1</sup> Sent members to parliament 23 ED-  
WARD I. but, tho' summoned again  
in this same reign, yet it made no  
other return, till 27 ELIZABETH.

PETERSFIELD Returned members to parliament 35  
EDWARD I. but made no other re-  
turns, till the reign of EDWARD  
VI.

STOCKBRIDGE<sup>2</sup> Began to return members to parlia-  
ment 1 ELIZABETH.

NEWTOWN Began to return members to parlia-  
ment 27 ELIZABETH.

CHRIST-

*Madox.* ° Was the king's city, and antient demesnes. *Brady*,  
82. *Madox*, passim. ° Belonged to the crown. *Brady's ap-  
pendix*, No 5. ° Was antient demesne of the crown. *Brady*, p.  
41. *Firma Burgi*, p. 8. ° See *Willis*, vol. 2. p. 497. ° Was,  
probably, antient demesnes of the crown, as the members of par-  
liament

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**CHRISTCHURCH.** Tho' this place was summoned to send members to parliament 35. EDWARD I. and 2 EDWARD II. yet it never made any return till 13 ELIZABETH.

**LYMMINGTON** Began to send members to parliament 27 ELIZABETH.

**WHITCHURCH** Never made any return to parliament before 27 ELIZABETH.

*Alresford* Returned members to parliament 23, 28, 34, 35 EDWARD I. but never since.

*Alton* Returned members to parliament 23 EDWARD I.; but, tho' frequently summoned afterwards both in this same, and subsequent reigns, yet the bailiffs never made any return to the precept.

*Basingstoke* Returned members to parliament 23, 30, 34 EDWARD I.; but tho' summoned 28, 33, 35 of the same prince, as likewise 2, 4 EDWARD II. yet the bailiffs never made any return to the sheriff's precept.

*Fareham* Returned members to parliament 34, 35 EDWARD I. but never since.

*Oberton* Returned to parliament 23, 28, 34, 35 EDWARD I. but never since.

*Odibam* Was summoned to send members to parliament, both in the time of EDWARD I. and EDWARD II. but the bailiffs returned no answer to the sheriff's precept.

**STAFFORD-**

liament are returned by the bailiff of the town, who is made in the leet, or court-baron. *Brady*, p. 82. <sup>1</sup> Came to the crown by way of exchange in the time of *Edward I.* *Brady*, p. 82. <sup>2</sup> Was the king's demesnes, *Madox*, Exchequer p. 229. <sup>3</sup> Was the king's town, and part of the antient demesnes. *Firma Burgi*, p. 97. <sup>4</sup> Domesday. <sup>5</sup> Was one of the royal manors. *Brady* 82. <sup>6</sup> Was part

STAFFORDSHIRE.

- STAFFORD**<sup>a</sup> Returned members to parliament 23 EDWARD I. and ever since.
- LITCHFIELD** Returned members to parliament 33 EDWARD I. 4, 5, 6, 7, 20 EDWARD II. and 1, 14, 27 EDWARD III. but then intermitted making any more returns till the reign of EDWARD VI.
- NEWCASTLE UNDER LINE**<sup>c</sup> Has returned members to parliament since 27 EDWARD III.
- TAMWORTH**<sup>c</sup> Never made any returns to parliament, till 5 ELIZABETH.

SUFFOLK.

- IPSWICH**<sup>b</sup> Returned members to serve in parliament 23 EDWARD I. and ever since.
- DUNWICH**<sup>c</sup> Has sent members to parliament ever since 23 EDWARD I.
- ORFORD**<sup>d</sup> Returned members to parliament 23 EDWARD I. and thro' all his reign, but after that discontinued making any more returns, till the time of HENRY VIII.
- SUDBURY.** The first return for this burrow was made 1 ELIZABETH.
- ALDBOROUGH** Never made any return to parliament till 13 ELIZABETH.
- EYE**<sup>e</sup> The first return of this burrow to parliament was 13 ELIZABETH.
- ST. EDMUNDS-BURY** Was made a corporation by JAMES I. and imprivileged by him to send two members to parliament.

SURREY.

part of the antient demesnes of the crown. *Brady*, 41. *Firma Burgi*, p. 7. <sup>b</sup> Was the king's town, being part of the royal demesnes. *Domesday*. <sup>c</sup> Was the king's town. See *Brady's appendix*, N<sup>o</sup> 3. <sup>d</sup> Was part of the royal demesnes. *Firma Burgi*, p. 8. <sup>e</sup> Belonged to the crown. *History of the Exchequer*,

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## SURREY.

|                                  |  |
|----------------------------------|--|
| <b>SOUTHWARK</b> <sup>f</sup>    | Returned members to parliament 23 EDWARD I. and ever since.                                  |
| <b>BLETCHINGLEY</b> <sup>g</sup> | Began to send to parliament 23 EDWARD I. and has continued ever since.                       |
| <b>RYEGATE</b>                   | Has returned to parliament ever since 23 EDWARD I.   |
| <b>GUILFORD</b> <sup>h</sup>     | Has returned members to parliament ever since 23 EDWARD I.                                   |
| <b>GATTON</b> <sup>i</sup>       | Has returned members to serve in parliament ever since 29 HENRY VI.                          |
| <b>HASLEMERE</b>                 | Never returned to parliament before 27 ELIZABETH.  |
| <i>Farnham</i>                   | Sent members to parliament 4, 5 EDWARD II. and 38 HENRY VI. but has discontinued ever since. |
| <i>Kingston</i> <sup>k</sup>     | Returned to parliament 4, 5, 6 EDWARD II. and 47 EDWARD III. but never since.                |

## SUSSEX.

|                                |  |
|--------------------------------|--|
| <b>CHICHESTER</b> <sup>k</sup> | Returned members to parliament 23 EDWARD I. and ever since constantly. |
| <b>HORSHAM</b> <sup>l</sup>    | Has sent members to parliament ever since 23 EDWARD I.                 |
| <b>MIDHURST</b> <sup>m</sup>   | Has made returns to parliament ever since 4 EDWARD II.                 |
| <b>LEWES</b> <sup>n</sup>      | Sent members to parliament 23 EDWARD I. and ever since constantly.     |

## SHORE-

409. <sup>f</sup> Belonged to the crown, as part of its demesnes. *Firma Burgi*, p. 7. <sup>g</sup> Was antient demesnes, the members being returned by the lord's bailiffs. <sup>h</sup> Was antient demesnes of the crown. *Brady* 41. *Firma Burgi*, 7. <sup>i</sup> Was antient demesnes of the crown. *Brady* 41. <sup>k</sup> Belonged to the crown, *Firma Burgi*, p. 7. <sup>l</sup> Was antient demesnes, the members being returned by the bailiffs chosen at the lord's leet. <sup>m</sup> Was antient demesnes, the members being returned by the lord's steward. <sup>n</sup> Was antient demesnes, for the same reason as *Midhurst*, *Horsham*, etc.

- SHOREHAM** \* Sent members to parliament 23 EDWARD I. and ever since constantly.
- BRAMBER** † First sent members to parliament 23 EDWARD I.; it afterwards intermitted sending, never making constant returns till 31 HENRY VI.
- STRYNING** † Sent members to parliament, for the first time, 4 EDWARD II; it then intermitted sending till 31 HENRY VI.
- EAST GRINSTEAD** † Has returned members to parliament from † EDWARD II.
- ARUNDEL** † Returned members to parliament 23 EDWARD I. and ever since.

WARWICKSHIRE.

- WARWICK** † Returned members to parliament 23 EDWARD I. and ever since.
- COVENTRY** † Having returned members 23 EDWARD I. and to his three next parliaments, it intermitted making any more returns (except 8 EDWARD II. and 20, 25 EDWARD III.) till 31 HENRY VI.

WESTMORELAND.

- APULBY** † Returned members to parliament 23 EDWARD I. and ever since.

WILTSHIRE.

- NEW SARUM** \* Returned members to parliament 23 EDWARD I. and ever since constantly.

OLD

\* Was antient demefnes, the members being returned by the constables.

† Was antient demefnes, the constable of the place being the returning officer.

‡ Was antient demefnes, the constable returning the members. § The lord's steward being the returning officer, we may conclude, that this place was antient demefne.

¶ Was the king's burrow. *Domesday.* † Was antient demefne of the crown. *Domesday.* ‡ Was antient demefnes, tho' granted by

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|              |  |
|--------------|--|
| OLD SARUM *  | Returned members to parliament 23 EDWARD I. but intermitted making any more returns till 34 EDWARD III. since which time it has constantly sent to parliament. |
| WILTON *     | Returned members to parliament 23 EDWARD I. and ever since constantly.   |
| DOWNTON *    | Having sent members to all the parliaments from 23 EDWARD I. to 38 EDWARD III. intermitted making any more returns (except 1 HENRY V.) till 20 HENRY VI.       |
| MINDON *     | The first return of this place to parliament was 27 HENRY VI.; for when summoned 7 RICHARD II. it made no answer to the sheriff's precept.                     |
| HEITESBURY * | Never returned to parliament before 27 or 28 HENRY VI.   |
| WESTBURY *   | Has sent members to parliament ever since 27 HENRY VI.   |
| CALNE *      | Returned members to all EDWARD I. parliaments, to 1 EDWARD II. and 34, 36 EDWARD III. but after that made no more returns till 2 RICHARD II.                   |
| DEVISES *    | Having sent members to all the parliaments of EDWARD THE FIRST, made only four more returns, (namely, 1, 8, 8, 19 EDWARD II.) till 4 EDWARD III.               |
| MALMSBURY *  | Has constantly returned to parliament ever since 23 EDWARD I.  |

MARLY

the crown to the bishops of the diocesis. \* Was part of the royal demesnes. *Brady*, 82. \* Belonged to the crown. *Brady* 41.  
 \* Was antient demesnes, the members being returned by the lord's bailiff. \* Was, probably, antient demesnes, the bailiff of the town being returning officer. \* Was part of the royal demesnes.  
 The

- MARLBOROUGH<sup>a</sup>** Sent members to parliament 23 EDWARD I. and ever since.
- CHIPPENHAM<sup>c</sup>** Having returned members to all the parliaments of EDWARD I. to two of EDWARD II. to four of EDWARD III. and to all the parliaments between 2 and 12 RICHARD II. ceased making any more returns till 1 HENRY VI.
- CRICKLADE<sup>d</sup>** Having sent members to all the parliaments of EDWARD THE FIRST, was afterwards very uncertain in the returns which it made till the time of HENRY VI. since which it has constantly sent.
- BEDWIN<sup>e</sup>** Having sent to all the parliaments of EDWARD THE FIRST, was very uncertain in its subsequent returns till 9 HENRY V.
- LUDGERSHALL<sup>f</sup>** Having sent to all EDWARD THE FIRST's parliaments, was afterwards very uncertain in its returns till 9 HENRY V.
- WOTTON-BASSET** Returned members to parliament 25 HENRY VI.
- Bradford** Sent members to parliament 23 EDWARD I. but never since.
- Mere** Returned members to parliament 23 EDWARD I. but being summoned 1 EDWARD II. made no answer to the precept.
- Higbworth<sup>g</sup>** Being summoned to return members to parliament 26 EDWARD I. the bailiffs

The lord's bailiff returns the members. <sup>b b</sup> Both belonged to the royal demefnes. *Brady*, 41. <sup>c</sup> Was the king's town. *Firma Burgi*, 7. <sup>d</sup> Belonged to the king, as his town. *Ibid.* <sup>e</sup> Was the king's town. *Ibid.* <sup>f f f</sup> Were all antient demefnes of the crown. *Brady*, 41. <sup>g</sup> Was antient demefnes, the members being returned by the lord's bailiff. <sup>h</sup> See *Firma Burgi*, p. 5. <sup>i</sup> Was

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bailiffs made no answer to the precept.

W O R C E S T E R S H I R E.

- WORCESTER**<sup>1</sup> Returned members to parliament 23 EDWARD I. and ever since constantly.
- DROITWICH**<sup>2</sup> Returned members 23 EDWARD I. and to every other parliament in this prince's reign, as likewise 2, 4 EDWARD II.; but afterwards made no more returns till the time of PHILIP and MARY, 1554.
- EVESHAM** Having sent members to parliament 23 EDWARD I. ceased making any more returns till 1 JAMES I.
- BEWDLEY** Was incorporated by JAMES I. and impowered to send one member to parliament.
- Kidderminster*<sup>1</sup> Returned members to parliament 23 EDWARD I. but never since.
- Bromsgrove* Returned members to parliament 23 EDWARD I. but never since.
- Duddelegb* Returned to parliament 23 EDWARD I. but never since.
- Perfere* Returned to parliament 23 EDWARD I. but never since.

Y O R K S H I R E.

- YORK**<sup>m</sup> Returned members to parliament 23 EDWARD I. and ever since constantly.
- HULL** Having sent members to parliament 33 EDWARD I. ceased making any more returns till 12 EDWARD II.

SCAR-

<sup>1</sup> Was the king's city. *Madox, Firma Burgi*, p. 8. <sup>2</sup> Belonged to the crown. *Ibid.* p. 8. <sup>1</sup> Was demefnes of the crown. *Ibid.* <sup>m</sup> Belonged to the crown. *Domesday. Firma Burgi*, p. 8. <sup>n</sup> Was the king's town. *Ibid.* •••• Were all part of the antient demefnes

*with the Date of their First Returns.* 425

|                             |   |
|-----------------------------|---|
| SCARBOROUGH <sup>a</sup>    | Sent members to parliament 23 EDWARD I. and ever since constantly.  |
| KNARESBOROUGH <sup>b</sup>  | Sent members to parliament, for the first time, 1 MARY.   |
| THIRSK <sup>c</sup>         | Having returned to parliament 23 EDWARD I. ceased making any more returns till the last year of EDWARD VI.                                  |
| MALTON <sup>d</sup>         | Having made two returns, 23, 26 EDWARD I. never sent again to parliament, till it was summoned by order of the house of commons 1640.       |
| NORTH-ALLERTON <sup>e</sup> | Having sent members to parliament 26 EDWARD I. ceased making any more returns, till summoned by order of the house of commons 1640.         |
| RIPPON                      | Returned members to parliament 23 EDWARD I. and 1 EDWARD II. but ceased making any more returns, till 1 MARY.                               |
| RICHMOND <sup>f</sup>       | Returned members to parliament 27 ELIZABETH.  |
| HEDON <sup>g</sup>          | Having returned members to parliament 23 EDWARD I. intermitted making any more returns, till 1 EDWARD VI.                                   |
| BOROUGH-BRIDGE              | Sent members to parliament 1 MARY.  |
| ALDBOROUGH <sup>h</sup>     | Never returned to parliament till the last of PHILIP and MARY.  |
| PONTFRAC <sup>i</sup>       | Returned members to parliament 23, 26 EDWARD I. but afterwards made no other return till the reign of JAMES I. by whom it was incorporated. |
|                             | BEVER-  |

meines of the crown. *Brady*, 41. <sup>p</sup> Being part of the demesnes of the Earls of Richmond, was very early made a free burrow by charter from them. <sup>q</sup> Was made a free burrow by charter in

time of King John, and came to the crown by way of exchange. <sup>r</sup> Were, probably, part of the antient demesnes of the crown, the returning

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|                  |  |
|------------------|--|
| <b>BEVERLEY</b>  | Having sent members to all EDWARD THE FIRST's parliaments, made no other return, (tho' it received three summonses in the time of EDWARD THE SECOND) till 5 ELIZABETH. |
| <b>Jervall</b>   | Returned to parliament 23 EDWARD I. but never after.   |
| <b>Pickering</b> | Sent members to parliament 23 EDWARD I. but never after.   |
| <b>Ravenfer</b>  | Returned to parliament 33 EDWARD I. 20 EDWARD II. 2 EDWARD III. but never afterwards.  |
| <b>Tykhill</b>   | Returned to parliament 23 EDWARD I. but never afterwards.  |

### CINQUE - PORTS.

|                   |   |
|-------------------|---|
| <b>HASTINGS</b>   | Sent members to parliament, for the first time, 42 EDWARD III.  |
| <b>DOVER</b>      | Returned to parliament, for the first time, 42 EDWARD III.  |
| <b>SANDWICH</b>   | Returned to parliament, for the first time, 42 EDWARD III.  |
| <b>HYTHE</b>      | Returned to parliament, for the first time, 42 EDWARD III.  |
| <b>ROMNEY</b>     | Returned to parliament, for the first time, 42 EDWARD III.  |
| <b>RYE</b>        | Returned to parliament, for the first time, 42 EDWARD III.  |
| <b>WINCHELSEA</b> | Returned to parliament, for the first time, 42 EDWARD III.  |
| <b>SEAFOED</b>    | Having sent members to parliament 26, 30 EDWARD I. 16, 19 EDWARD II. 18, 20, 21 RICHARD II. and 1 HENRY IV. ceased making any more returns till 16 CHARLES I. |

WALES.

returning officers being the lord's bailiffs. <sup>r</sup> This place belonged to the crown. *Firma Burgi*, 8. <sup>t</sup> Was vested in the crown. *Firma Burgi*, p. 8. <sup>v</sup> Belonged to the crown. *Firma Burgi*, p. 8.

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W A L E S.

*The Twelve WELSH COUNTIES, with the TWELVE  
SHIRE TOWNS, viz.*

BEAUMAURICE,

BRECKNOCK,

CAERDIGAN,

CAERMARTHEN,

CAERDIFF,

CAERNARVEN,

DENBIGH,

FLINT,

HAVERFORD-WEST,

MONTGOMERY,

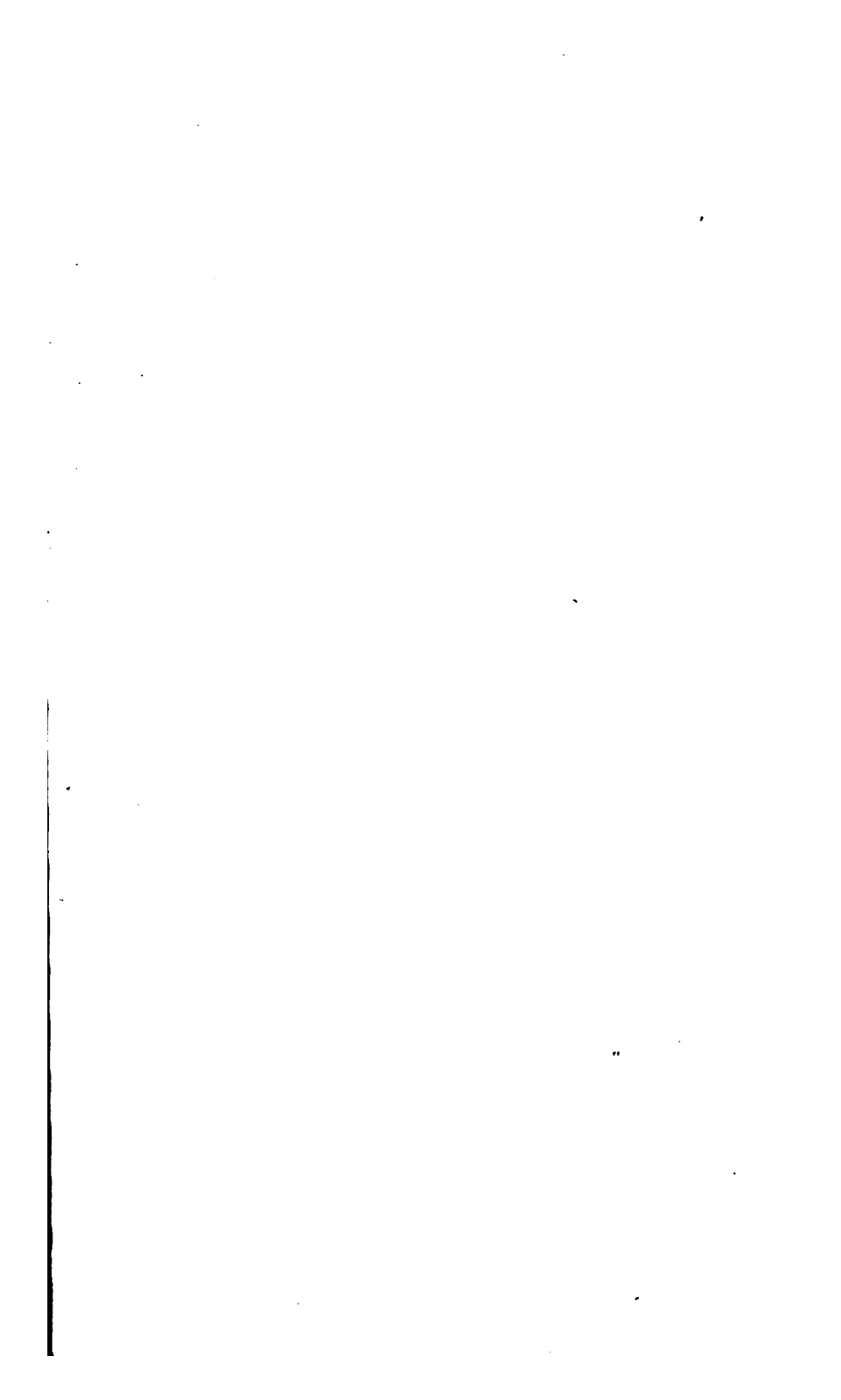
PEMBROKE,

RADNOR,

Were each of them imprivileged by act of parliament,  
27 HENRY VIII. to send one member to parliament.

F I N I S.

21  
47









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